

**Production Contract No. 2893  
(Sale of Plantation Products)**

**Western Australia Biomass Pty Ltd**

**and**

**Forest Products Commission**

**Forest Products Commission**

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**Products Contract  
(Sale of Plantation Products)**

**Date:** As per the date of signing by the Commission on the Execution Page

**Parties:** Forest Products Commission of Level 1, D Block, 3 Baron-Hay Court, Kensington, Western Australia ('**Commission**')

and

Western Australia Biomass Pty Ltd ABN 87122 951 660 of Suite 6 11 Rangers Rd, Neutral Bay, NSW 2089 ('**Buyer**')

**Recitals:**

- A. Under the Act, the Commission is empowered to enter into production contracts for the management, harvesting or sale of Forest Products.
- B. By an instrument of delegation made on the 10th day of 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 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 Biomass for its proposed Facility when it is constructed.
- D. Following the Buyer's response to an expression of interest issued by the Commission, on 10 August 2007 the Commission entered into Production Contract 2893 with the Buyer to provide Biomass.
- E. Production Contract 2893 has been varied on several occasions. This agreement amends and re-states Production Contract 2893.
- F. The Commission has identified additional Forests Products which may be available to the Buyer and those additional Forest Products have been included in this agreement.
- G. The Biomass to be supplied by the Commission is intended to be mainly from residues remaining in plantations following the removal of higher value products.

- H. The Commission and the Buyer have agreed that the Commission will sell, and the Buyer will purchase, Biomass during the Term, at the Price, in the quantities and on the terms and conditions of this agreement.
- I. The CALM Act Minister (as defined in the Act) has concurred with the Commission entering into this agreement, pursuant to section 58A(3) of the Act.
- J. The parties intend this agreement to be a plantation product contract within the meaning of the Act.

**Operative provisions:**

**1. Definitions**

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1.1 In this agreement:

**Act** means the Forest Products Act 2000 (WA).

**Additional Biomass** means Biomass harvested from within the Biomass Supply Zone which is in excess of the Minimum Annual Intake and:

- (a) is not required by the Commission to meet contractual commitments in place at the time of harvest; or
- (b) is not a Forest Product which the Commission sells for a higher price than the Gross Stumpage for the relevant type of Biomass.

**Adjustment Event** means:

- (a) an event over which the parties have no control and which materially affects the Commission's costs of producing and supplying Biomass or which materially changes (or prevents) the harvesting of the plantations from which Biomass is supplied for higher value products than Biomass;
- (b) a change in Law; or
- (c) a change in Taxes.

**Affected Party** means a party to this agreement which is prevented from performing its obligations or satisfying a condition as a result of a Force Majeure event.

**Agreed Annual Biomass Intake** means the quantity of Biomass to be delivered by the Commission to the Buyer in any Year, including the Minimum Annual Intake as varied in accordance with clause 16, and any Contracted Additional Biomass.

**Annual Working Plan** means a document prepared by the Commission and approved by the Buyer which outlines the next Year's planned Biomass Intake and operational matters in accordance with Schedule 6.

**Australian Standards** means Australian Standard AS/NZS 1301.010s:2007 as varied or replaced from time to time and AS/NZS 1301.013rp as varied or replaced from time to time.

**Authorisation** includes:

- (a) any consent, authorisation, registration, filing, accreditation, recording, agreement, notarisation, certificate, permission, license, approval, permit, authority, exemption, ruling or statutorily required policy of insurance; or
- (b) in relation to any act, matter or thing which may be proscribed or restricted in whole or in part by law or otherwise if a Governmental Authority intervenes or acts in any way within a specified period after lodgement, registration or other notification of such act, matter or thing, the expiration of such period without such intervention or action.

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

**Authorised Trustee Investment** means an authorised investment as defined in section 6 of the Trustees Act 1962 (WA) or a special purpose account established under section 16(1)(c) of the Financial Management Act 2006 (WA), or an investment authorised by the Treasurer of Western Australia for investment by governmental 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 acceptable to the Commission.

**BDMT Measurement Equipment** means certified sampling, drying and weighing equipment operated by the Buyer in accordance with Australian Standards, at or near to the Facility and used to determine Bone Dry Metric Tonnes.

**Biomass** means Processed Biomass, Residue or Log (or any combination of them) derived from Forest Products and meeting the Specifications.

**Biomass Intake** means the quantity of Biomass comprising the Minimum Annual Intake and the Additional Biomass as set out in Part A of Schedule 2:

- (a) to be delivered to the Buyer in a Year; and
- (b) made available for removal and collection by the Buyer in a Year,

as that quantity may be adjusted or varied from time to time under clauses 7, 8, 16, 17 and 40.2(b).

**Biomass Supply Zone** means the area within 200 kilometres of the Site which is shown in the map set out in Schedule 1.

**Bone Dry Metric Tonne** or **BDMT** means the weight of Biomass once moisture has been reduced in accordance with the Australian Standards, or any alternative method agreed between the parties and described in the Annual Working Plan.

**Business Day** means any day except a Saturday, a Sunday, or a Public Holiday in Perth, Western Australia.

**Business Hours** means the hours during the days on which Biomass may be delivered under this agreement as agreed by the parties under clause 9.5 or as otherwise agreed.

**Buyer Event of Default** means an event or circumstance specified in clause 27.1.

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

**Chain of Responsibility Legislation** means Laws introduced by the State in order to, amongst other things, improve road safety under relevant provisions of the Road Traffic (Vehicles) Act 2012 (WA) and the Road Traffic (Administration) Act 2008 (WA).

**Claim** means any claim, right, action, proceeding, demand, or entitlement of any kind and includes, without limitation, 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 statutory obligation.

**Clean Energy Regulator** has the meaning given to that term in the Clean Energy Regulator Act 2011 (Cth).

**Code** means the Code of Practice for Timber Plantations in Western Australia published by the Forest Industries Federation WA Inc, as amended or replaced from time to time.

**Commencement Date** means the date notified by the Buyer to the Commission in writing as being the date on which Biomass deliveries are to commence (which notice must be given at least 6 months before the date on which deliveries are to commence), or 24 months after Construction Commencement, whichever occurs earlier.

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

**Commission Event of Default** has the meaning given in clause 28.

**Commission Property** in relation to this agreement and any Concurrent Contract includes all Forest Products and any Biomass delivered to or processed by the Buyer or a Related Entity of the Buyer, or by any other person at the direction of the Buyer, under this agreement or any Concurrent Contract, in respect of which moneys are owing or are payable to the Commission or the General Manager (as the case may be).

**Concurrent Contract** means any contract, deed or agreement which is expressed to be collateral with this agreement, made between the Commission or the General Manager (as the case may be) and the Buyer or a Related Entity of the Buyer.

**Construction Commencement** means the commencement of construction of the Facility.

**Consumer Price Index** means the Consumer Price Index (All Groups) for Perth, Western Australia, published by the Australian Statistician and includes any replacement index or formula agreed or determined under Schedule 4.

**Contracted Additional Biomass** has the meaning given in clause 8.2(e).

**Contractor** means a person other than the Commission or the Buyer that operates under a contract entered into by the Commission or the Buyer for the production (that is, felling and removal) or production and delivery (as the case may be) of Biomass to the Buyer for the purposes of this agreement, including any approved subcontractor.

**Contractor Costs** means in the event a Contractor is engaged by the Commission with respect to the production, or production and delivery (as the case may be) of Biomass to the Buyer under this agreement, the third party costs, charges and expenses incurred by the Commission in relation to those services. For the avoidance of doubt, the Gross Stumpage incorporates the Commission's profit and the Commission is not entitled to make an additional profit margin on the Contractor Costs.

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

**Coupe** means any part or parts of a Timber Supply Area that has been set aside in a Commission logging plan for the purpose of obtaining Forest Products.

**Cure Plan** means a plan prepared by the Commission under clause 28 to remedy a Commission Event of Default.

**Delivered Metric Tonne** means the weight of Biomass including moisture measured at the time the Biomass is delivered to the Site.

**Delivered Price** means the Price of Biomass delivered to the Site expressed per Bone Dry Metric Tonne or Delivered Metric Tonne as varied from time to time in accordance with the provisions of Schedule 4 and includes those components referred to in section 59 of the Act.

**Due Date** has the meaning given in clause 4.4.

**Extreme Conditions** means a temporary condition that in the reasonable opinion of the Authorised Officer would render it unsafe for the Buyer or its Contractors to remove Biomass from a Coupe, including fire, floods or other extreme weather conditions.

**Facility** means the proposed power station for commercial electricity generation to be constructed, owned and operated on the Site and includes all plant, machinery, equipment and related facilities.

**Financing Agreement** means an agreement or document evidencing the Project Financing.

**Financing Entity** means, collectively, the lender or syndicate of lenders providing the Project Financing and includes any agent or security trustee acting on its or their behalf.

**Force Majeure** means any cause or event outside the Affected Party's reasonable control and which the Affected Party has not caused or materially contributed to by its negligent acts or omissions, including:

- (a) fire, lightning, explosion, flood, earthquake, storm, cyclone, drought, landslide, natural disaster, epidemic, radioactive contamination, risk to health or safety, toxic or dangerous chemical contamination or force of nature;
- (b) actual or threatened environmental harm within the meaning of the Environmental Protection Act 1986 (WA) to, or actual or threatened serious or irreversible environmental damage to any site or the occurrence of any hazard to bio-diversity values or the ecological integrity of any Timber Supply Area;

- (c) the occurrence of any event which in the reasonable opinion of an Authorised Officer may cause continued performance of obligations to contravene any provision of a Relevant Management Plan relating to, or otherwise to materially adversely affect, sound silvicultural or arboricultural practice in, or the sustainable commercial viability of, a Timber Supply Area;
- (d) riots, insurrection, civil commotion, malicious damage, sabotage, act of terrorism, act of public enemy, war (whether declared or not) or revolution;
- (e) strike, lockout, boycott, work ban or other labour dispute (other than where any such action is by the employees of the Affected Party or directed solely at the Buyer or the Commission);
- (f) breakage or failure of, or an accident to, any part of the Facility or other plant machinery or equipment owned or operated by the Affected Party and required by the Affected Party for the performance of obligations under this agreement, which occurs notwithstanding that the Affected Party has taken all reasonable steps to safeguard against the same; and
- (g) order of a court, tribunal, or other Governmental Authority or the award of any arbitrator, or the inability to obtain or delay in obtaining governmental, quasi-governmental or regulatory Authorisation.

**Forest Products** has the meaning given to that term in section 4 of the Act.

**Fuel Reference Price** means the Perth Terminal Gate Price for diesel (without deduction of any rebates but inclusive of GST), which is published by the Australian Institute of Petroleum on its website at [www.aip.com.au](http://www.aip.com.au) and includes any replacement price reference agreed or determined under Schedule 4.

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

**Government Authority** means any nation or government, any state or other political subdivision thereof, and any entity exercising legislative, judicial, regulatory or administrative functions of, or pertaining to, any government.

**Gross Stumpage** means the Price of Biomass expressed per Bone Dry Metric Tonne or Delivered Metric Tonne and includes those components referred to in section 59 of the Act (including, but not limited to, the Commission's operating costs in relation to the Forest Products and a component representing a profit from exploitation of the Forest Products) as varied from time to time in accordance with the provisions of Schedule 4, but excludes any Contractor Costs.

**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).

**Hardwood** means any pored angiosperm growing in a Timber Supply Area.

**Independent Expert** means an independent expert appointed in accordance with clause 25.



**Input Tax Credit** has the meaning given to that expression in the GST Act.

**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; or
- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so; or
- (e) a body corporate is or states that it is insolvent; or
- (f) as a result of the operation of section 459F(1) 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 459C(2)(b) 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 ceases to have legal capacity or is or admits to being insolvent or 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) a controller under section 9 of the Corporations Act is appointed to a body corporate; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above happens in relation to a person or a body corporate under the law of any applicable jurisdiction.

**Law** means positive law and includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity, condition of any Authorisation or rule of an applicable stock exchange, as amended, consolidated or replaced.

**Log** means any Forest Product in log form meeting the Specifications.

**Log Delivery Note** means a log delivery note either in hard copy or electronic version prepared in accordance with the Regulations.

**Log Yard Procedure** means a document prepared by the Buyer in accordance with clause 9.9, setting out the procedures by which the Buyer accepts Biomass at the Site.

**Manual** means the Contractors' Timber Harvesting Manual for Plantations published by the Commission, as amended or replaced by a standard operating procedures document or any other document from time to time.

**Minimum Annual Intake** means the minimum amount of Biomass which must be made available to the Buyer by the Commission and the minimum amount of Biomass that must be accepted by the Buyer in any Year as shown in Item A1 of Schedule 2 and as amended in accordance with clause 16.

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

**OSH Act** means the Occupational Safety and Health Act 1984 (WA).

**OSH Regulations** means the Occupational Safety and Health Regulations 1996 (WA).

**PPS Law** means each of the provisions of:

- (a) the Personal Property Securities Act 2009 (Cth) (**PPS Act**);
- (b) any regulations made at any time under the PPS Act; or
- (c) any amendment made at any time to any other statute as a consequence of a PPS Law referred to in paragraph (a) or paragraph (b).

**Prepayment Deposit** means the Prepayment Deposit referred to in clause 4.3(a), the amount of which (if any) is shown in Part C of Schedule 2 and includes that sum as may be added to or otherwise varied or replaced from time to time by notice to the Buyer, and includes interest accrued up until the Commencement Date.

**Price** means the price, calculated by reference to clauses 5, 8.1 and Schedule 3, payable by the Buyer for Biomass purchased by the Buyer under this agreement.

**Processed Biomass** means any Forest Product that has been chipped, milled, mulched and/or mechanically fragmented into chips and small pieces meeting the Specifications.

**Production Contract 2893** means Production Contract 2893 between the Commission and the Buyer dated 10 August 2007.

**Project Financing** means financing for the construction, operation and maintenance of the Facility including without limitation any refinancing, modification or amendment of such financing.

**Public Holiday** means a day specified as a public holiday or a bank holiday in line with the Second Schedule of the Public and Bank Holidays Act 1972 (WA).

**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 agreed between the parties or failing agreement, selected by an Independent Expert) plus 2%.

**Regulations** means the Forest Management Regulations 1993 (WA).

**Related Entity** of an entity means another entity which is related to the first within the meaning of the Corporations Act.

**Relevant Management Plan** means the forest management plan made under Part 5 of the CALM Act and in operation from time to time.

**Removal Instructions** has the meaning given in clause 11.1(b).

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

**Renewable Energy Certificate or REC** means a renewable energy certificate in the form of a large scale generation certificate created under Division 4, Subdivision A, Part 2 of the Renewable Energy Act in respect of generation of electricity by the Facility.

**Residue** means any Forest Product that remains in a Coupe or came from a Coupe, after the removal, or proposed removal, of any Forest Products:

- (a) which are required by the Commission to meet its contractual commitments under supply contracts entered into prior to the Commencement Date; or
- (b) which the Commission sells for a higher price than the Gross Stumpage for Residue,

and after the retention of any material necessary for sound, sustainable silvicultural or arboricultural practice in accordance with the Code and the Manual.

**Roadside Collection** has the meaning given in clause 11.1.

**Schedule of Rates** means a schedule of rates attached to a production contract for services for harvesting and/or haulage between the Commission and a Contractor. Examples of the form of the Schedule of Rates which is required to be provided by the Commission to the Buyer are contained in Schedule 3.

**Security** means:

- (a) cash or an instrument of security referred to in clause 26.1 and shown in Part G of Schedule 2;
- (b) any additional or replacement Security demanded, required or lodged under clause 26.2; and
- (c) all interest accrued on a security referred to in paragraphs (a) and (b).

**Security Interest** has the meaning given in the PPS Act.

**Shortfall** in respect of a Year means the amount expressed in Delivered Metric Tonnes by which the quantity of Biomass determined by the Commission to be the quantity which would have had to have been delivered to satisfy the Biomass Intake for that Year exceeds the aggregate of:

- (a) the quantity of Biomass which is actually accepted in that Year by the Buyer in accordance with this agreement;
- (b) the quantity of Biomass which was not delivered to the Buyer by the Commission in that Year due to the default of the Commission under this agreement; and
- (c) the quantity of Biomass which the Buyer or the Commission is, or both are, excused from accepting or delivering (as the case may be) in that Year pursuant to clause 31.

**Site** means the site identified in Part D of Schedule 2 and includes all of the Facility on such site.

**Softwood** means any gymnosperm growing in a Timber Supply Area.

**Specifications** means the specifications as to species, quality and measurement set out in Schedule 5 as those specifications may be varied or replaced by written agreement between the parties from time to time.

**State** means the State of Western Australia.

**Subsidiary** of an entity means another entity which is a subsidiary of the first within the meaning of part 1.2 division 6 of the Corporations Act or is a subsidiary of or otherwise controlled by the first within the meaning of any accounting standard approved under the Corporations Act or otherwise generally accepted in Australia.

**Supply Period** means any complete period of 5 Years, after the Commencement Date.

**Taxes** means taxes, levies, imposts, deductions, charges, withholdings and duties imposed by any authority (including, without limitation, stamp and transaction duties) (together with any related interest, penalties, fines and expenses in connection with them), except if imposed on the overall net income of the Commission.

**Tax Invoice** has the meaning given to that expression in the GST Act.

**Taxable Supply** has the meaning given to that term in the GST Act.

**Term** means the period set out in Part B of Schedule 2 and includes any extension or diminution of that period under this agreement or the Act.

**Timber Supply Area** means any land on which Forest Products are situated.

**Tonne** means a metric tonne of Forest Products as is measured and recorded by the method authorised for the time being by the Commission (including but not limited to a weighbridge or BDMT Measurement Equipment) in accordance with the Regulations.

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

**Tripartite Agreement** means the agreement that will be entered into by the Commission, the Buyer and the Financing Entity, and any agent or representative of any Financing Entity that contains provisions recognising the rights of the Financing Entity and the security trustee and how those rights interrelate to the rights of the Commission, including acknowledgement of the rights of the Financing Entity under the Financing Agreement, how rights on default may be exercised, substitution of the Buyer with another operator and disposal of the Facility. The form of the Tripartite Agreement will be substantially the same as the agreement set out in Schedule 8.

**Waiting-time Charge** means a charge as set out in Schedule 3 and includes that charge as varied from time to time in accordance with Schedule 4 on account of those costs, charges and expenses of a kind referred to in clause 9.7.

**Year** means the period from and including 1 July of any year to and including 30 June of the following calendar year.

1.2 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, but not limited to, persons taking by novation) and 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 telex and facsimile transmissions;
- (h) an obligation of two or more parties shall bind them jointly and severally;
- (i) 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;
- (j) if a word or phrase is defined then cognate words and phrases have corresponding definitions;
- (k) a reference to any thing (including, without limitation, 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;
- (l) 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;
- (m) 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);
- (n) headings and subheadings shall be ignored in construing this agreement;
- (o) references to time are to local time in Perth, Western Australia;

- (p) where time is to be reckoned from a day or event, such day or the day of such event shall be excluded;
- (q) any notice to be given by a party to this agreement shall be in writing;
- (r) a reference to a clause, part or schedule is a reference to a clause or part of, or a schedule to, this agreement;
- (s) this agreement includes its schedules;
- (t) references to currency are to Australian currency unless otherwise stated;
- (u) 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;
- (v) "including" means "including, but not limited to"; and
- (w) 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**

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- 2.1 This agreement does not become binding on the parties and has no force or effect, unless each of the following conditions (each a **Condition Precedent**) have been satisfied:
  - (a) the Buyer commences the construction of the Facility on or before 31 December 2014;
  - (b) the Buyer has made material progress in relation to the construction of the Facility by 30 September 2015; and
  - (c) the Buyer commences the receipt of deliveries of Biomass by 1 July 2017.
- 2.2 The Buyer shall be responsible for satisfying the Conditions Precedent and the Buyer shall use all reasonable endeavours to satisfy each Condition Precedent by the dates specified in clause 2.1 or such other dates as are agreed in writing between the parties (each a **Satisfaction Date**).
- 2.3 The Buyer shall:
  - (a) promptly advise the Commission in writing if the Buyer is of the opinion that a Condition Precedent will not be satisfied or waived by the relevant Satisfaction Date; and
  - (b) promptly notify the Commission in writing of the date on which each Condition Precedent is satisfied or waived.
- 2.4 If in any notice given by the Buyer pursuant to clause 2.3(a), the Buyer notifies the Commission that the Buyer wishes to extend the relevant Satisfaction Date, the parties must meet as soon as practicable after the notice is given to discuss in good faith the extension of the Satisfaction Date. However nothing in this clause 2.4 requires the Commission to agree any change to a Satisfaction Date.

- 2.5 The Conditions Precedent are for the benefit of both parties and may only be waived by mutual agreement in writing.
- 2.6 A party is entitled to terminate this agreement by written notice to the other party if any of the Conditions Precedent are not satisfied by the relevant Satisfaction Date. However, neither party is entitled to terminate pursuant to this clause 2.6:
- (a) in circumstances where the party seeking to terminate is in breach of any of its obligations under this clause 2; or
  - (b) at any time after the relevant Condition Precedent has been satisfied or waived.

### **3. Sale and purchase**

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Subject to the Act, the Commission agrees to sell and the Buyer agrees to purchase during the Term:

- (a) the Minimum Annual Intake; and
- (b) the Contracted Additional Biomass,

meeting the Specifications (subject to clause 15.11), at the Price, and in accordance with the terms and conditions of this agreement.

### **4. Payment**

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- 4.1 The Buyer shall pay the Price together with all applicable GST to the Commission at the offices of the Commission referred to in clause 38.2 or to any other place in Western Australia nominated by the Commission.
- 4.2 The Commission shall prepare and render to the Buyer twice monthly invoices for Biomass delivered under this agreement. Invoices shall be prepared by reference to the Price and to Log Delivery Notes.
- 4.3 Where the Commission at the Buyer's request has agreed in writing that the Buyer may pay the Price in advance of delivery of Biomass under this agreement the Buyer shall on or before the Commencement Date (or such other date as the Commission may agree) lodge the Prepayment Deposit with the Commission in the following terms:
- (a) The Prepayment Deposit shall be credited and held to the account of the Buyer in the books of the Commission (**Prepayment Deposit Account**).
  - (b) The Commission shall debit the Buyer's Prepayment Deposit Account with the undisputed amount payable under an invoice rendered under clause 4.2 together with GST (if applicable) and shall notify the Buyer accordingly.
  - (c) The Commission will be excused from delivering Biomass to the Buyer where the available credit in the Prepayment Deposit Account is insufficient to meet the Price and all applicable GST relating to that Biomass.

- (d) On termination of the Term by effluxion of time or earlier as hereinafter provided, the balance (if any) in the Prepayment Deposit Account shall be repaid, free of interest, to the Buyer.
- 4.4 Where there is no Prepayment Deposit, then subject to clauses 4.6, 4.7 and 4.9, the Buyer shall pay the undisputed amount of each invoice together with GST (if applicable) on or before the date which is 30 days from the date of the invoice (**Due Date**) provided however that the Commission may, but is not obliged to, in response to the Buyer's written request made prior to the relevant Due Date, grant to the Buyer an extension of time for payment beyond that Due Date.
- 4.5 Notwithstanding anything contained (whether express or implied) in this agreement (other than this clause 4.5) to the contrary, if GST is imposed or is payable on or in respect of any supply of Biomass by the Commission under or in connection with this agreement, or if the amount of GST is calculated by reference to any such supply, or if GST is imposed or is payable on or in respect of or by reference to any amount payable to the Commission under or in connection with this agreement, the Buyer must pay to the Commission an extra amount equal to the amount of that GST.
- 4.6 The Buyer shall pay to the Commission all amounts payable under clause 4.4 on each Due Date for Payment or other due date of the payment to which they relate, provided that the Buyer's obligations under clause 4.4 will only apply if the Commission has provided the Buyer with a valid Tax Invoice for the relevant Supply which:
- (a) meets the requirements of the GST Act and any regulations governing the GST and any relevant requirements of the Australian Taxation Office (or other relevant administering body or person); and
  - (b) sets out the amount in respect of which GST is payable and the amount of that GST.
- 4.7 The Commission shall present to the Buyer a reconciliation of the Buyer's account to the last day of each Year. The amount of any debit or credit resulting from such reconciliation shall be settled by the Buyer or the Commission (as the case may require).
- 4.8 The Buyer shall pay on demand interest on the undisputed portion of any invoices remaining unpaid on the Due Date or the last day of any extension of the Due Date granted to the Buyer under clause 4.4 (whichever is the later) assessed from the Due Date or the last day of any extension of the Due Date (as the case may be) to the date of payment at the Rate.
- 4.9 If an alleged inaccuracy in an invoice is proved to the parties' reasonable satisfaction it shall be rectified by the creation of an appropriate credit or debit in any subsequent rendering of accounts (as the case may require), and, failing agreement between the parties, as determined in accordance with the Dispute Resolution Procedure set out in clause 24.



## **5. Price components and variations**

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- 5.1 The Price for Biomass to be purchased under this agreement includes those components referred to in section 59 of the Act.
- 5.2 The Price for Biomass shall be calculated by reference to Schedule 3. For the avoidance of doubt, the parties agree that if the harvest and delivery of the Biomass is undertaken (in accordance with the Annual Working Plan or as otherwise agreed between the parties):
- (a) by the Commission (where the Delivered Price applies), the Price shall be calculated by reference to the Delivered Price;
  - (b) by the Commission (other than where the Delivered Price applies), the Price shall be calculated by reference to:
    - (i) the Gross Stumpage; and
    - (ii) the Contractor Costs;
  - (c) by the Buyer, the Price shall be calculated by reference to the Gross Stumpage only;
  - (d) on the basis of Roadside Collection, the Price shall be calculated by reference to:
    - (i) the Gross Stumpage; and
    - (ii) that part of the Contractor Costs which represents the costs incurred by the Commission in harvesting and extracting the Biomass.
- 5.3 Subject to clause 11, the Commission will complete the harvest, processing and delivery of the Biomass to the Buyer at the Delivered Price, unless agreed otherwise.
- 5.4 The Price shall be varied in accordance with Schedule 4.

## **6. Risk and property**

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- 6.1 Risk in Biomass the subject of a Log Delivery Note will pass from the Commission to the Buyer:
- (a) if Roadside Collection applies, at the time of Roadside Collection; and
  - (b) otherwise, at the time of delivery of the Log Delivery Note.
- 6.2 Without prejudice to the rights of the Commission under the Act, it is agreed by the parties that the property in the Biomass supplied under this agreement will remain with the State until the Commission has been paid all moneys owing or payable to the Commission or the General Manager (as the case may be) under this agreement.
- 6.3 Notwithstanding clause 6.2 the Commission permits the Buyer to process Residue on or near the Coupe as contemplated by this agreement.

## **7. Planning**

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- 7.1 Prior to the commencement of Biomass harvesting and delivery the Commission will conduct a competitive process to engage Contractors for harvest and delivery of Biomass. The parties acknowledge that the Contractors which will be engaged in the harvest and delivery of Biomass as at the Commencement Date will be selected from contractors which the Commission has then engaged for the production (that is, felling and removal) or production and delivery (as the case may be) of Forest Products.
- 7.2 Each engagement of Contractors by the Commission after the Commencement Date for the harvest and delivery of Biomass during the Term will be the result of a competitive process. The Commission and the Buyer, acting reasonably, will agree to appropriate terms for the process for the engagement of Contractors.
- 7.3 Before the Commission engages a Contractor for the harvest or delivery of Biomass under this agreement, the Commission shall reasonably consult with the Buyer prior to the nomination of any preferred Contractor. In nominating a preferred Contractor, the Commission shall have reasonable regard to the views of the Buyer.
- 7.4 The Commission must, in consultation with the Buyer, use all reasonable endeavours to procure that, when engaging a Contractor, the charges and expenses payable to a Contractor with respect to the production, or production and delivery (as the case may be) of Biomass under this agreement relate to the actual costs of providing those services and do not subsidise the costs of the provision of any other services provided by the Contractor to the Commission.
- 7.5 At the meeting referred to in clause 7.6 which takes place immediately prior to each Supply Period, the Commission and the Buyer shall determine how much of the Biomass Intake will be supplied by the Commission's Contractors (as Processed Biomass and/or Logs) and by the Buyer's Contractors (as Residue) or any other arrangement agreed between the Commission and the Buyer, over the forthcoming Supply Period. The Commission and Buyer will jointly prepare a Supply Period Plan which will include items including but not limited to those in Schedule 6.
- 7.6 The Commission and the Buyer shall meet by 31 March each Year to finalise the Annual Working Plan which will apply for the following Year. The preparation of the Annual Working Plan will involve:
- (a) specifying the delivery schedule for the following Year;
  - (b) considering the impact of any variation to the Minimum Annual Intake in accordance with clause 16;
  - (c) if necessary, varying the Biomass Intake to be supplied to the Buyer in the following Year, subject to meeting the Minimum Annual Intake;

- (d) determining the proportion of each type of Biomass to be supplied in the following Year;
  - (e) identifying any Additional Biomass that will become available and that the Commission can supply to the Buyer in the following Year and any other subsequent Year;
  - (f) identifying any Additional Biomass that may become available during the following Year; and
  - (g) considering how the delivery schedule is to be managed to reduce the moisture content of Biomass supplied to the Buyer.
- 7.7 Representatives of the parties shall meet quarterly each Year (or otherwise as the parties may agree) to discuss the operation and implementation of the Annual Working Plan.

## **8. Additional Biomass**

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- 8.1 Subject to this clause and clause 11.2(d), the Buyer has exclusive rights to purchase all Residue within the Biomass Supply Zone on the terms of this agreement. Where this Residue is not made available to the Buyer as part of the Minimum Annual Intake, it is to be offered to the Buyer as Additional Biomass.
- 8.2 The Commission must offer the Buyer any Additional Biomass in accordance with the following process:
- (a) As soon as practicable after the Commission becomes aware that the Additional Biomass will become available, the Commission will inform the Buyer in writing that Additional Biomass will become available and the details of such Additional Biomass (**Available Additional Biomass**), including the amount and composition of the Available Additional Biomass and the Year or Years during which the Available Additional Biomass will be available for purchase by the Buyer. The Commission will endeavour to give at least 6 months' notice of the availability of the Additional Biomass.
  - (b) The Buyer will have 20 Business Days to consider whether it wishes to purchase all or part of the Available Additional Biomass. If the Buyer wishes to purchase all or part of the Available Additional Biomass the Buyer will respond in writing to the Commission within that 20 Business Day period, setting out the amount of Available Additional Biomass which it requires (**Requested Additional Biomass**) and the proposed price for the Requested Additional Biomass.
  - (c) The Commission and the Buyer, acting reasonably at all times, will have 20 Business Days to negotiate the price for the Requested Additional Biomass. For the avoidance of doubt, if the Commission does not agree to the price proposed by the Buyer for the Requested Additional Biomass, the Commission must offer a different price.

- (d) If the Buyer offers to purchase Requested Additional Biomass which is harvested from within the Biomass Supply Zone (**Inside Zone Additional Biomass**) for the Gross Stumpage within the 20 Business Day period specified in clause 8.2(c), then the Commission must accept that offer, provided that the parties must also agree the price payable by the Buyer for harvesting, extracting and delivering the Inside Zone Additional Biomass (as applicable) before the Inside Zone Additional Biomass becomes Contracted Additional Biomass.
  - (e) If the parties agree to a price for the Requested Additional Biomass the Requested Additional Biomass (**Contracted Additional Biomass**) will form part of the Agreed Annual Biomass Intake for the relevant Year or Years.
  - (f) If:
    - (i) the Buyer does not give the Commission a notice specifying the Requested Additional Biomass in accordance with clause 8.2(b); or
    - (ii) the parties, acting reasonably, cannot agree to a price for the Requested Additional Biomass,the Commission may sell the Available Additional Biomass to a third party.
  - (g) If clause 8.2(f)(ii) applies then the price at which the Commission sells the Available Additional Biomass to a third party must not be less than the price at which the Commission offered to sell the Available Additional Biomass to the Buyer.
- 8.3 The Agreed Annual Biomass Intake for any Year shall be amended from time to time to include any Additional Biomass to be supplied under clause 8.1.

## **9. Delivery and unloading**

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- 9.1 From the Commencement Date, but subject to any delivery exemption under clause 4.3(c), 11 or 17, the Commission shall deliver Biomass to the Buyer at the Site within Business Hours in accordance with the delivery schedule in force under clause 9.2 and the Buyer shall accept the Biomass if delivered in accordance with this agreement.
- 9.2 The delivery schedule for any Year will be as agreed by the Buyer and the Commission as part of preparing the Annual Working Plan contemplated in clause 7.6 and, failing agreement, as determined in accordance with clause 25, but in any event shall provide for delivery of quantities sufficient to ensure that the Minimum Annual Intake is achieved.
- 9.3 The Buyer shall at its own cost provide Biomass stockpiling facilities at the Site and shall accept delivery when required of sufficient Biomass to maintain compliance with the delivery schedule in force under clause 9.2.
- 9.4 The Buyer must ensure that stockpile facilities can accommodate a short term surge of Biomass deliveries of up to an additional 3,000 tonnes over 10 Business Days above the requirements in clause 9.3.

- 9.5 As at the date of this agreement Business Hours will be 6.00am to 5.00pm each day. During the preparation of the Annual Working Plan contemplated in clause 7.6 the parties shall confer and agree any changes to the Business Hours, procedures and other operational matters relating to Biomass deliveries.
- 9.6 The Buyer shall at its own cost provide all necessary personnel and unloading facilities and if the Contractors' trucks reasonably require assistance to unload then the Buyer shall carry out all unloading operations at the Site. The unloading facilities provided must meet OSH Act and OSH Regulations work safe requirements and equipment must in the reasonable opinion of the Authorised Officer be suitable for effectively unloading all Biomass from Commission contracted trucks.
- 9.7 Trucks delivering Biomass will be unloaded within 30 minutes from arrival at the Site unless the delay is caused by the Commission or the Commission's Contractor. Subject to clause 9.8, if the Buyer fails to unload trucks which require assistance to unload within that time the Commission may invoice a reasonable Waiting-time Charge against the Buyer.
- 9.8 The Commission may not invoice the Waiting-time Charge where the Buyer agrees, at the Commission's request, to accept deliveries of Biomass at the Site at times other than the Business Hours.
- 9.9 To meet the Commission's obligations under Chain of Responsibility Legislation the Buyer must prepare and provide a Log Yard Procedure which meets the requirements set out in Schedule 7 and is acceptable to the Commission before the start of deliveries. The Buyer must comply with the Log Yard Procedure as amended and agreed from time to time.

## **10. Operational Coupes**

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- 10.1 The Commission may in the Commission's sole discretion, deliver Biomass from any Coupe to the Buyer and the Buyer has no entitlement to Biomass from any particular Coupe.
- 10.2 Subject to clause 10.1, when drawing up Annual Working Plans for production and delivery of Biomass to the Buyer under this agreement, the Commission will use reasonable endeavours to minimise the haulage distance and the haulage costs, if applicable, from the Timber Supply Area.

## **11. Buyer collection of Residue**

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- 11.1 The Buyer will remove and collect Residue directly from roadside at nominated Coupes (**Roadside Collection**) as follows:
- (a) the Commission will harvest Trees located in the Coupes to satisfy the Commission's other production agreements in place;
  - (b) after any harvesting pursuant to clause 11.1(a) the Commission will inform the Buyer in writing that the Residue on the Coupes is available for collection by the Buyer (**Removal Instructions**);

- (c) the Removal Instructions must:
  - (i) be consistent with the Annual Working Plan unless otherwise agreed between the parties;
  - (ii) include a map of the Coupe or part of the Coupe where collection can occur; and
  - (iii) specify the required timeframes for collection and operational considerations and issues as outlined in the Manual or Annual Working Plan;
- (d) the Commission will clearly demarcate Residue available for collection and processing by the Buyer or a Buyer's Contractor;
- (e) the Commission will permit the Buyer or the Buyer's Contractor to collect, process and remove from the Coupes Residue in accordance with the terms of this agreement; and
- (f) the Buyer is not responsible for the subsequent disposal of any Residue that is not removed by the Buyer in accordance with this agreement.

11.2 The Buyer agrees that:

- (a) for purposes of this clause 11, it will only engage Contractors who meet the reasonable requirements of, and who are approved by the Commission;
- (b) for the purposes of this clause 11, it will employ suitably qualified persons to undertake the supervision of its Contractors;
- (c) it will remove the amount of Residue set out in the Annual Working Plan unless it is prevented from doing so due to Extreme Conditions; and
- (d) if the Buyer fails to completely remove Residue in accordance with the Removal Instructions and the Buyer has not notified the Commission that the Buyer is unable to complete removal due to an Extreme Condition, the Commission may sell that Residue to a third party.

11.3 When removing the Residue from the Coupes the Buyer must take all reasonable steps to ensure the Buyer and the Buyer's Contractor at all times comply with the Code and the Manual.

## **12. Access and coordination**

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The Buyer and Commission will endeavour to work cooperatively on the Coupes:

- (a) as is required in order for the supply of the Biomass in accordance with the Annual Working Plan; and
- (b) so as to avoid conflict between the Buyer's and Commission's operations and activities.

## **13. Renewable nature of Biomass**

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13.1 The parties agree that the Buyer has all rights, title and interest in any Renewable Energy Certificates (RECs) or other similar products or rights, including but not limited to any tradeable instruments relating to the

reduction or abatement of CO2 emissions arising from the generation of electricity under any current or future Law, that are produced from or in connection with Biomass purchased by the Buyer under this agreement or used in the operation of the Facility.

13.2 The parties acknowledge that the Buyer requires that all biomass used at the Facility be an "eligible renewable energy source" under the Renewable Energy Act (**RES Requirements**). The Buyer acknowledges that:

- (a) it has satisfied itself that the supply of the Biomass in accordance with the Specifications and otherwise in accordance with the terms of this agreement satisfies the RES Requirements; and
- (b) the Commission does not warrant that, and has made no representations that, the supply of the Biomass in accordance with the Specifications and otherwise in accordance with the terms of this agreement satisfies the RES Requirements.

13.3 If for any reason, at any time during the Term, the supply of Biomass under this agreement does not or may not satisfy the RES Requirements (**RES Issue**) and the Buyer gives the Commission written notice of the RES Issue, the parties will negotiate in good faith and endeavour to resolve the RES Issue, including the negotiation of any amendments reasonably requested by the Buyer to this agreement in order to address the RES Issue.

13.4 For the avoidance of doubt:

- (a) if the parties do not agree any amendment to this agreement which is required to address the RES Issue then the failure to agree the amendment will not be subject to the application of clauses 24 (Dispute Resolution) or 25 (Independent Expert); and
- (b) nothing in this clause 13 limits the application of clause 30 (Adjustment Event).

13.5 The Commission must use all reasonable efforts, in connection with Biomass purchased by the Buyer under this Agreement, to provide information reasonably requested by the Buyer to assist in any required registration of the Buyer and accreditation of the Facility and creation of RECs under the Renewable Energy Act or any future Law which may replace or supplement the Renewable Energy Act.

13.6 The Commission will use all reasonable efforts to notify the Buyer promptly in writing if the Commission becomes aware that the Biomass made available to the Buyer does not meet the requirements of this clause 13.

13.7 If the Commission identifies additional Forest Products which:

- (a) meet the RES Requirements; and
- (b) do not conform to the Specifications,

then the Buyer and the Commission will investigate the option of amending this agreement to include those Forest Products in the Biomass.

#### **14. Measurement of quantity and recording**

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- 14.1 Authorised representatives of the Commission and the Buyer shall complete, date, sign and complete delivery of a Log Delivery Note in respect of every delivery of Biomass to the Buyer at the time and place of each such delivery. The Buyer's representative shall sign and return to the Commission the original of the Log Delivery Note in accordance with Regulations 48 and 52.
- 14.2 Delivery of the Log Delivery Note to the Buyer's representative shall, subject to clause 15, constitute acceptance by the Buyer of the Biomass described in the Log Delivery Note.
- 14.3 At the time of each delivery of Biomass, the Commission, or the Buyer at the direction of the Commission, shall calculate the weight or volume (as the case may be) of Biomass delivered by the system of measurement shown in Part F of Schedule 2 or, if for any reason the Commission agrees that that method is not applicable, then by any other method determined for the time being and from time to time by the Commission.

#### **15. Biomass not conforming to Specifications**

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- 15.1 If the Commission delivers any Biomass to the Buyer which, in the opinion of the Buyer, does not conform to the Specifications, the Buyer shall give notice thereof (**Non-conformance Notice**) to the Commission within seven days of delivery.
- 15.2 If the Buyer does not give a Non-conformance Notice within 7 days of delivery, the Buyer shall be deemed to have accepted the Biomass.
- 15.3 The Commission and the Buyer shall assess Biomass described in a Non-conformance Notice within seven days of the date of receipt of the Non-conformance Notice and shall endeavour to agree on whether the Biomass described in the Non-conformance Notice meets the Specifications.
- 15.4 If the parties do not agree whether or not the Biomass described in a Non-conformance Notice meets the Specifications within 30 days of the notice being given, either party may refer the dispute for Independent Expert determination in accordance with clause 25.
- 15.5 The Commission shall record details of Biomass delivered which does not conform to Specifications.
- 15.6 The Parties shall use reasonable endeavours to negotiate a reduction in Price for any Biomass described in a Non-conformance Notice that does not meet the Specifications.
- 15.7 If the parties do not agree a price adjustment in respect of Biomass which does not comply with Specifications within 30 days of the date on which it is agreed or determined that the Biomass does not comply with Specifications, the Commission must issue a credit note for that Biomass to the Buyer and the Commission shall collect the relevant Biomass at its own cost.



- 15.8 The quantity of Biomass recorded on the credit note will not be considered part of the Biomass Intake.
- 15.9 Any credit note issued under clause 15.7 may be subject to review in accordance with clause 4.7.
- 15.10 The Commission shall remove any Biomass for which a credit note has been issued under clause 15.7 at the Commission's expense within 14 days of the date of issue of the credit note.
- 15.11 This clause 15 shall not apply to any case where Biomass, in the reasonable opinion of the Commission, fails to conform to Specifications due primarily to any act or omission of the Buyer or its Contractors and in those circumstances the Commission will have no liability to the Buyer in respect of the non-compliance with the Specifications.

#### **16. Variations to Minimum Annual Intake**

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- 16.1 If the Buyer wishes to vary the Minimum Annual Intake for a Year then the Buyer must prepare and submit a written proposal to the Commission by 1 March in the preceding Year, specifying in such detail as the Commission may reasonably require, its proposed Minimum Annual Intake for the next Year.
- 16.2 The Commission must notify the Buyer within 2 weeks of receipt of the Buyer's proposal under clause 16.1 of whether or not the Buyer's proposed Minimum Annual Intake is acceptable to the Commission. If the Buyer's proposed Minimum Annual Intake is not acceptable to the Commission and the parties fail to agree on an alternative Minimum Annual Intake during the preparation of the Annual Working Plan contemplated in clause 7.6, the Minimum Annual Intake in effect at that date will not be altered.
- 16.3 Subject to clause 16.2 the Commission may, but is not obliged to, approve an increase or reduction in the Minimum Annual Intake pursuant to clause 16.1, and if approved such approval shall be conditional on the following:
- (a) the increase or reduction shall apply solely to the Year to which the proposal relates; and
  - (b) the increase or reduction shall be temporary and will not operate to increase or diminish the Biomass Intake for the subsequent Years of the Term; and
  - (c) in the case of a reduction, the Buyer may not at any time subsequently during the Term require the Commission to deliver the quantity of Biomass Intake foregone by such reduction.
- 16.4 If, except as permitted in this agreement, the Buyer fails to accept the aggregate Minimum Annual Intake in effect during a Supply Period:
- (a) such failure will be a Buyer Event of Default to which the provisions of clause 27 will apply; and

- (b) the Commission shall be entitled to claim liquidated damages in accordance with clause 19 in respect of the shortfall in Minimum Annual Intake.

## **17. Exemptions**

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- 17.1 The Commission may, but is not obliged to, at the Buyer's request, by notice exempt the Buyer from accepting delivery for such period or periods not exceeding in aggregate two weeks in any Year as may be notified by the Commission by reason of any cause which the Commission reasonably considers may justify a temporary exemption.
- 17.2 The Commission shall be exempted by notice to the Buyer from maintaining continuity of Biomass supplies according to the agreed rate of supply under clause 9.2 where suspension of bush operations by Contractors is necessitated by Extreme Conditions provided that the Commission shall use reasonable endeavours to minimise deviations from the agreed rate of supply under clause 9.2.
- 17.3 This clause 17 does not relieve the Commission of the Commission's obligation to supply, nor the Buyer of the Buyer's obligation to take delivery of, the whole of the Minimum Annual Intake required in any Year under this agreement.
- 17.4 This clause 17 does not limit clause 31 in any way.

## **18. Buyer Financier Right**

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- 18.1 The Commission acknowledges that the Buyer may from time to time enter into one or more Financing Agreements with a Financing Entity.
- 18.2 If the Buyer gives the Commission a notice stating that a Financing Entity has agreed to Project Financing, then (subject to clause 18.3) the Commission will enter into a Tripartite Agreement as soon as is practicable, providing for the consent of the Commission to the security given to the Financing Entity.
- 18.3 The Commission shall only be required to enter into a Tripartite Agreement if it reasonably considers the Financing Entity to be reputable and to have sufficient financial capacity to perform the obligations of the Buyer as contemplated by clause 2.1(b) of the Tripartite Agreement.

## **19. Failure to accept delivery**

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- 19.1 If the Buyer for any reason (other than as permitted by clauses 15, 16, 17 and 31 or any other term of this agreement) refuses, or fails to accept, delivery in accordance with its obligations under this agreement of any quantity of Biomass, or in either case evinces an intention to do so, and continues to do so for more than 7 days after notice from the Commission stating its intention to invoke the provisions of this clause, then the Commission may do any one of the following:
  - (a) require the Buyer to accept delivery of that quantity of Biomass; or

- (b) recover liquidated damages in accordance with clause 19.2 on account of the Buyer's refusal or failure to accept delivery of that quantity of Biomass,

to the extent permitted by law. For the avoidance of doubt, in this clause 19 "delivery" includes the removal and collection of Residue by the Buyer pursuant to clause 11.

- 19.2 If the Buyer fails to accept at least 90% of the Agreed Annual Biomass Intake for a Year, the Commission shall be entitled to claim and the Buyer must pay liquidated damages calculated as:

50% of the Delivered Price for the Shortfall Quantity

Where the Shortfall Quantity = 90% of the Agreed Annual Biomass Intake for that Year (being 90% of the quantity of each category of Biomass in the Agreed Annual Biomass Intake) less the quantity of each category of Biomass accepted by the Buyer during that Year.

- 19.3 Clause 19.2 will not apply if the Buyer fails to accept delivery as permitted in clause 15, 16, 17, or 31 or as otherwise permitted under the agreement.
- 19.4 If the Buyer for any reason (other than as permitted by clauses 15, 16, 17 or 31) refuses, or fails to accept, delivery in accordance with its obligations under this agreement of any quantity of Biomass, or in either case evinces an intention so to do and continues to do so for more than 7 days after the notice referred to in clause 19.1 is given, then that quantity of Biomass shall be deemed to have been forfeited and the Buyer cannot subsequently in any Year of the Term require the Commission to deliver that quantity of Biomass.
- 19.5 The rights and remedies of the Commission under this clause 19 are in addition to and without prejudice to the exercise by the Commission of any other rights and remedies which the Commission may have under this agreement, including (without limitation) the Commission's rights and remedies under clause 27, at law, in equity, or under the Act or any other statute.

## **20. Facility intake summary and other records**

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- 20.1 Subject to clause 36, the Buyer shall at its own cost prepare and deliver to the Commission in the form of the monthly mill intake summary issued by the Commission, the records referred to in Regulation 57 and such other information which is prescribed by the Regulations and any regulations made under section 70 of the Act.
- 20.2 The Buyer shall at its own cost prepare in writing in a form acceptable to the Commission and deliver to the Commission on or before the last day of July in each Year an accurate record of all Forest Products and Biomass in the possession or under the control of the Buyer as at 30 June of the immediately preceding Year on or in respect of which moneys are owing or payable to the Commission or the General Manager (as the case may be) under this agreement and each Concurrent Contract and their location on the Site.

20.3 The Commission, at its sole expense, may from time to time carry out such audits, enquiries and inspections of the Buyer's accounts or premises and may appoint accountants, auditors and other representatives for the purpose of verifying compliance by the Buyer with its obligations under clause 20.2.

20.4 The Buyer shall deliver the records and summaries referred to in clause 20.1 and 20.2 to the Authorised Officer to the place and at the times set out in Part E of Schedule 2, as may be varied by the Commission from time to time by notice to the Buyer.

## **21. Access to Site**

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The Buyer shall give free access to any Authorised Officer to the Site for the purpose of performing obligations and exercising rights under the Act and this agreement. The Authorised Officer shall observe the Buyer's normal safety and operational procedures whilst on the Site and shall exercise all reasonable care to prevent property loss or damage or personal injury whilst on the Site and shall 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 any negligent or unlawful act or omission of the Authorised Officer.

## **22. Other timber segregated**

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The Buyer shall keep separate records of all Commission Property in the Buyer's possession or under its control from any other biomass or Forest Products delivered to the Buyer by any other person.

## **23. Warranty**

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23.1 The Commission warrants that it has good title to the Forest Products and Biomass supplied under this agreement and that the Forest Products and Biomass are free from all liens, charges, encumbrances and third-party rights of any kind.

23.2 Subject to clause 23.1, the Buyer 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 Forest Products or Biomass or the use to which it may be put or any other matter.

## **24. Dispute Resolution**

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24.1 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 either the Buyer or the Commission (**Instituting Party**) may, at any time, give a notice (**Initiating Notice**) to the other of the Buyer and the Commission (as the case may be) containing full particulars of the Dispute, including terms proposed by the Instituting Party for settlement of the Dispute.

24.2 The party to whom an Initiating Notice is given must give to the Instituting Party notice of its response (**Response**) within 14 days after the date the Initiating Notice is given.

24.3 If, within 14 Days after the date a Response is given, the Instituting Party gives to the other party notice that it is satisfied by the Response, the Response shall be binding on all parties to this agreement.

24.4 If the Instituting Party is dissatisfied with a Response, or the other party fails to give a Response, the Instituting Party may, within 14 days after the latest date on which the Response should be given, give notice (**Dispute Notice**) to the other party requiring that the Dispute be determined by a dispute resolution as hereinafter provided.

24.5 Where the Instituting Party serves a Dispute Notice on the other party, neither party may commence any court proceedings (other than for urgent relief), or tribunal or arbitration proceedings relating to the Dispute unless the parties have first endeavoured in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation 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:

- (a) the dispute resolution technique and procedure to be adopted;
- (b) the timetable for all steps in those procedures; and
- (c) 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.

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

24.7 The provisions of this clause shall not apply to:

- (a) any case where a Minister in the Government of the State, or the Commission is by the Act, or any other law, given expressly a discretionary power; or
- (b) any matter which is required to be referred to an Independent Expert under clause 25.

## **25. Independent Expert**

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25.1 Wherever, under this agreement:

- (a) any matter is expressly to be referred to an Independent Expert; or

- (b) during the Term the parties agree that a point of difference between them as to the application of any industry or technical standard or any rules, practices or customs of any trade or profession shall be resolved by an expert,

then the matter in issue (**Expert Matter**) shall be referred to an Independent Expert for determination and this clause 25 shall apply.

25.2 The procedure for the appointment of an Independent Expert shall be as follows:

- (a) the party wishing the appointment to be made shall give notice to that effect to the other party and give details of the matter which it proposes shall be resolved by the Independent Expert (**Expert Referral Notice**);
- (b) if the matter to be referred to the Independent Expert is not resolved by the parties within 14 days from the date of the Expert Referral Notice, the parties shall meet in an endeavour to agree upon a single Independent Expert to whom the Expert Matter shall be referred for determination;
- (c) the Independent Expert shall have qualifications and experience appropriate to the Expert Matter and have no direct or indirect personal interest in the outcome of the determination the Independent Expert is requested to make;
- (d) if within 30 days of the Expert Referral Notice, the parties fail to agree upon the appointment of a single Independent Expert:
  - (i) if the Expert Matter is primarily of a technical nature, then the parties shall request the President of the Institute of Foresters of Australia from time to time (or in the event that there is no office of such institute of that name, the person who in substance carries out the role of such office) to appoint the Independent Expert;
  - (ii) if the Expert Referral Notice is given pursuant to clause 30 or Schedule 4 (**Adjustment Expert Matter**), then the parties shall request the Minister to appoint the Independent Expert; or
  - (iii) if neither clause 25.2(d)(i) nor clause 25.2(d)(ii) applies, then the parties shall request the Institute of Arbitrators & Mediators Australia (Western Australian Chapter Chairman) to appoint the Independent Expert.
- (e) The Independent Expert shall be instructed to:
  - (i) determine the Expert Matter within the shortest practicable time;
  - (ii) apply the principles set out in clause 25.3, if the Expert Matter is an Adjustment Expert Matter; and
  - (iii) deliver a report stating his or her opinion with respect to the Expert Matter setting out the reasons for the decision.

25.3 If the Expert Matter is an Adjustment Expert Matter, the Independent Expert shall be instructed to make his or determination in accordance with the following principles:

- (a) the Price and other terms of the supply of Biomass under this agreement must at all times be consistent with the obligations of the Commission under the Act and Regulations and all other applicable Laws including, without limitation, sections 12 and 59 of the Act;
- (b) to the extent not inconsistent with clause 25.3(a), Biomass should be supplied under this agreement:
- (i) as efficiently and as cost effectively as is reasonably practicable having regard to the Commissions' obligations under the Act;
  - (ii) in a manner which facilitates, or is not inconsistent with, the Commission selling Forest Products for a commercially viable value;
  - (iii) at a Price which:
    - reflects the Gross Stumpage (which incorporates the Commission's profit margin) plus the Contractor Costs (on the basis that the Commission will use all reasonable endeavours to minimise Contractor Costs and provided that the Commission will act in accordance with best operating practices and in accordance with good commercial practices in respect of Contractor Costs);
    - with respect to the Contractor Costs component, reflects the costs of the Contractors producing, or producing and delivering (as the case may be) Biomass to the Buyer and does not subsidise the costs of the provision of any other services provided by the Contractor to the Commission; and
    - reflects the actual moisture content of the Biomass being supplied under this agreement;
  - (iv) such that the Biomass Intake constitutes a reliable, efficient and commercially viable fuel supply for the Facility to operate profitably (assuming that the Facility is operated in accordance with best operating practices for facilities of its type and in accordance with good commercial practices); and
  - (v) on the basis that:
    - the Commission will disclose its costs in connection with Biomass supply to the Buyer in a detailed and transparent manner (subject to compliance with all applicable Laws and third party contractual requirements); and
    - in connection with a determination of the Reviewed Delivered Price (as defined in Part B of Schedule 4), the Buyer will disclose the factors relevant to whether the Biomass Intake constitutes a reliable, efficient and commercially viable fuel supply for the Facility to operate profitably in a detailed and transparent manner (subject to compliance with all applicable Laws and third party contractual requirements).

- (c) subject always to clause 25.3(a), the benefit or burden of changes to the costs incurred by the Commission in connection with the supply of Biomass is to be shared equitably between the parties (assuming that the Buyer will not bear any additional costs as a result of the Commission not acting in accordance with best operating practices or in accordance with good commercial practices).
- 25.4 The Independent Expert shall determine the procedures for the conduct of the process in order to resolve the Expert Matter and must provide each party with a fair opportunity to make submissions in relation to the Expert Matter.
- 25.5 Any process or determination of the Expert Matter by the Independent Expert shall be made as an expert and not as an arbitrator and the determination of the Independent Expert shall be final and binding on the parties without appeal so far as the law allows and except in the case of obvious error or where either party has not been provided with a fair opportunity to make submissions in relation to the Expert Matter.
- 25.6 The costs in relation to a determination by the Independent Expert shall be dealt with as follows:
- (a) the remuneration of the Independent Expert shall be advanced by the parties in equal shares, until agreement or a determination is made under clause 25.6(b) as to who should pay for such remuneration;
  - (b) unless the parties otherwise agree, the Independent Expert shall determine which party shall bear the costs of the determination and in what proportion, having regard to the degree to which he or she considers a party was at fault or unreasonable in failing to agree to the matter under reference, and that party shall bear those costs accordingly; and
  - (c) the Independent Expert may award interest (at the Rate) on any moneys payable by one party to the other as a consequence of the Independent Expert's determination.
- 25.7 A party must not commence any proceedings in respect of a dispute unless the procedures set out in clauses 24 and 25 have been complied with. However, nothing in this clause 25.7 shall prejudice the right of a party to institute legal proceedings to seek urgent interlocutory injunctive or declaratory relief in respect of a dispute or a cross claim relating to the dispute brought by one party against another.
- 25.8 Prior to the resolution of a dispute, the parties must continue to perform their respective obligations under this agreement insofar as those obligations are not the subject matter of the dispute.

## **26. Security**

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- 26.1 As security for the performance by the Buyer of its obligations in this agreement and in any Concurrent Contract the Buyer shall prior to the Commencement Date (or such later date as the Commission may approve



by written notice to the Buyer) deliver to the Commission a Bank Guarantee in the amount specified in Part G of Schedule 2.

- 26.2 The Commission may review a Security at any time or times and if, on such review, the Commission reasonably considers that a Security has ceased to be acceptable to the Commission, then the Commission will require the Buyer to furnish replacement or additional security for performance by the Buyer of its obligations under this agreement. The Buyer shall within 6 weeks after written request by the Commission furnish replacement or additional security in a form and upon terms and conditions approved by the Commission, which approval shall not be unreasonably withheld. On receipt of approved replacement security the Commission shall release and discharge the original security.
- 26.3 Where a Security is lodged in cash or any Bank Guarantee or additional or replacement security is converted to cash the Commission 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 26.
- 26.4 If a Buyer Event of Default occurs, the Commission may exercise its rights under clause 27.2(e) including in respect of accrued interest on the Security.
- 26.5 If the Buyer has paid all moneys and has complied with all of its obligations under this agreement and each Concurrent Contract the Commission 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).

## **27. Buyer Event of Default**

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27.1 If:

- (a) the Buyer does not pay on time or within 7 days of the due date any amount owing or payable under this agreement and such breach is not remedied within 7 days after the Commission serves notice on the Buyer specifying the payment default and requiring that it be remedied;
- (b) the Buyer for any reason (other than as permitted by clauses 15, 16, 17 and 31 or any other term of this agreement) refuses, or fails to accept, delivery in accordance with its obligations under this agreement of any Biomass, or evinces its intention to do either;
- (c) the Buyer breaches any material covenant or obligation on the Buyer's part to be performed or observed under this agreement (other than a covenant or obligation to pay money referred to in clause 27.1(a)) and such breach is not remedied within 30 days after the Commission serves notice on the Buyer specifying the breach and requiring that it be remedied;

- (d) subject to the terms of the Tripartite Agreement, the holder of a mortgage or charge over any asset of the Buyer enforces any rights of execution against property under that mortgage or charge;
- (e) any execution or other lawful process in an amount exceeding \$2,000,000 is levied upon or issued against any property of the Buyer;
- (f) except as provided in clause 31, the Buyer ceases to carry on business for a period exceeding 90 days without first obtaining the written consent of the Commission;
- (g) any judgment for an amount exceeding \$2,000,000 is obtained against the Buyer in any Court which judgment remains unsatisfied for 90 days from its date and without lodgement of notice of appeal having been made within the proper time;
- (h) the Buyer fails to furnish within 14 days of a demand a Security or to deposit moneys required by the Commission in a Prepayment Deposit Account under subclause 4.3(a);
- (i) an Insolvency Event occurs in respect of the Buyer; or
- (j) the Buyer breaches a provision of the Act, any regulations made under section 70 of the Act, or the Regulations or is convicted in a court of competent jurisdiction of a breach of any Law, which breach in the reasonable opinion of the Commission materially and detrimentally affects the performance by the Buyer of its obligations under this agreement,

THEN this will be a Buyer Event of Default.

27.2 At any time after a Buyer Event of Default occurs the Commission may do one or more of the following:

- (a) give a notice which reduces the Minimum Annual Intake or suspends for any period of time and from time to time the operation of this agreement;
- (b) without notice to the Buyer exercise the Commission's rights and powers under Part 9 of the Act in respect of the Commission Property in the Buyer's possession pursuant to this agreement and any Concurrent Contract (whether or not a Buyer Event of Default has occurred under such Concurrent Contract) and with or without a warrant enter any premises occupied by the Buyer (including but not limited to any Site) without liability for trespass or otherwise;
- (c) acting through one of its Authorised Officers or another agent, enter the Buyer's premises and seize and remove any Biomass not paid for by the Buyer, or if the Biomass is indistinguishable from other biomass at the site then an amount of Forest Products that is commensurate with the most up to date record of the proportion of Forest Products that was supplied from the Commission;
- (d) make demand on the Buyer for any and all moneys owing or payable by the Buyer to the Commission under this agreement and any Concurrent Contract (whether or not such Concurrent Contract has been cancelled

or terminated under clause 27.2(f)) but remaining unpaid at the date of such demand;

- (e) realise, appropriate and enforce any Security and apply any amount received under any Security in and towards payment and satisfaction of any amounts owing by the Buyer under this agreement and any Concurrent Contract; and
- (f) by notice to the Buyer terminate this agreement with effect from the date of service of the notice or any later date specified in the notice,

and, save as provided in clause 27.3, shall be under no liability to the Buyer or any other person for anything arising as a consequence of the exercise of any power conferred by or referred to in this clause 27.2.

27.3 The Buyer hereby indemnifies and shall keep the Commission, the General Manager and the State, its officers, employees and agents and all instrumentalities of the State and the officers, employees and agents of such instrumentalities, indemnified from and against all Claims by any person for or in respect of any loss (excepting loss of profits or any form of indirect or consequential loss or damage) or damage of whatsoever nature or kind caused, or for specific performance obtained, as a consequence or suffered by reason of:

- (a) the entry onto any property and the seizure, detention, removal, sale or disposition of Commission Property by, or by any person on behalf of, the Commission, or of other Forest Products, Biomass or other timber or timber products by, or by any person on behalf of, the Commission, in the exercise of a power under this agreement, the CALM Act, or the Act; or
- (b) the occurrence of a Buyer Event of Default; or
- (c) the exercise by the Commission of its rights or remedies under this agreement, at law, in equity, or under statute following the occurrence of a Buyer Event of Default, or other event specified in clause 27.2,

except in the case of negligence in the seizure, detention, removal or the sale or other disposition of the Commission Property, or Forest Products, Biomass or other timber or manufactured timber products by the Commission, its officers, employees or agents.

27.4 Any cancellation or termination of the rights and obligations created by this agreement and any Concurrent Contract shall be without prejudice to any rights acquired by any party under or pursuant to this agreement or any Concurrent Contract prior to such cancellation or termination.

27.5 The rights and remedies of the Commission under this clause 27 are in addition to and without prejudice to the exercise by the Commission of any other rights and remedies which the Commission may have under this agreement, at law, in equity, or under the Act or any other statute.

27.6 Whilst the Buyer is in material default under this Agreement, the Commission may suspend the performance of its obligations under this Agreement.

## **28. Commission Default**

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28.1 If the Commission breaches any material covenant or obligation on the Commission's part to be performed or observed under this agreement (**Commission Event of Default**) then, without prejudice to any other rights or claims the Buyer may have, the Buyer may give to the Commission a written notice (**Breach Notice**) specifying the Commission Event of Default and demanding that the Commission Event of Default:

- (a) be rectified within 30 days in cases where the relevant Commission Event of Default is ongoing and is still capable of being cured by performance on the part of the Commission (**Rectifiable Breach**); or
- (b) be remedied within 30 days by the payment of full compensation for the loss and damage flowing from the Commission Event of Default to the Buyer in cases where the relevant Commission Event of Default is not ongoing and is not capable of being cured by performance (**Non-rectifiable Breach**).

28.2 If the Commission receives a Breach Notice and:

- (a) in the case of a Rectifiable Breach:
  - (i) does not, within 30 days of the Breach Notice being given, rectify the Commission Event of Default by performance; or
  - (ii) if the Commission Event of Default is not capable of being cured within 30 days of the Breach Notice being given, does not within 10 days of the Breach Notice being given provide a Cure Plan; or
  - (iii) having provided a Cure Plan, fails to implement that Cure Plan (or any revised Cure Plan which is agreed between the parties) and that failure is not cured within 7 days after receipt of notice from the Buyer to do so; or
  - (iv) having provided and implemented a Cure Plan, the Commission Event of Default is not rectified by performance within the time period specified for rectification in the Cure Plan; and
- (b) in the case of a Non-rectifiable Breach has not, within 30 days of the Breach Notice being given, paid full compensation for the loss and damage flowing from the Commission Event of Default to the Buyer,

then the Buyer may terminate this agreement in accordance with clause 28.6.

28.3 A Cure Plan must detail:

- (a) the reason why the Commission Event of Default occurred;
- (b) if the Commission Event of Default has occurred previously, an explanation as to why there has been a repetition;

- (c) the time required to cure the relevant Commission Event of Default, which must:
    - (i) be the minimum time required for the Commission, acting reasonably, to remedy the relevant Commission Event of Default; and
    - (ii) in any event, not exceed 45 days from the date of occurrence of the Commission Event of Default;
  - (d) a work plan:
    - (i) setting out each step or task undertaken or to be undertaken to cure the relevant Commission Event of Default and to avoid future occurrences of the Commission Event of Default; and
    - (ii) which the Commission reasonably anticipates will rectify the Commission Event of Default by performance; and
  - (e) a program setting out the time for each step or task to be commenced and completed.
- 28.4 Each Cure Plan must be approved in writing by the Buyer (acting reasonably) and approval must not be unreasonably withheld or delayed.
- 28.5 Any dispute regarding the Cure Plan may be submitted by either party to the Independent Expert for determination.
- 28.6 If the Buyer is entitled to terminate this agreement pursuant to clause 28.2, the Buyer may terminate this agreement by giving written notice to the Commission specifying the date from which and the grounds upon which this agreement is terminated.
- 28.7 The rights and remedies of the buyer under this clause 28 are in addition to and without prejudice to the exercise by the Buyer of any other rights and remedies which the Buyer may have under this agreement, at law or in equity.
- 28.8 Upon termination of this agreement pursuant to clause 28.6, the rights, liabilities and obligations of the parties which have accrued at the date of such termination shall not be affected.
- 28.9 The Commission hereby indemnifies and shall keep the Buyer, its officers, employees and agents indemnified from and against all Claims by any person for or in respect of any loss (excepting loss of profits, or any form of indirect or consequential loss or damage) or damage of whatsoever nature or kind caused, or for specific performance obtained, as a consequence or suffered by reason of:
- (a) the occurrence of a Commission Event of Default; or
  - (b) the exercise by the Buyer of its rights or remedies under this agreement, at law, in equity, or under statute following the occurrence of a Buyer Event of Default.

## 29. PPS Law

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If, in the reasonable opinion of the General Manager, a PPS Law applies, or will in the future apply in relation to this agreement and that PPS Law:

- (a) adversely affects or would adversely affect the Commission's security position or the rights or obligations of the Commission under or in connection with this agreement (**Adverse Effect**); or
- (b) enables or would enable the Commission's security position to be improved without adversely affecting the Buyer in a material respect (**Improvement**),

the General Manager may by notice to the Buyer require it to do anything necessary and reasonable (including amending this agreement or executing any new document) that in the General Manager's reasonable opinion is necessary or desirable to ensure that, to the maximum possible extent, the Commission's security position, and rights and obligations, are not subject to an Adverse Effect or are improved by an Improvement. The Buyer must comply with the requirements of that notice within the time stipulated in the notice.

## 30. Adjustment Event

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30.1 If at any time during the Term an Adjustment Event occurs which:

- (a) results in a material increase or reduction in costs incurred by the Commission in supplying Biomass in accordance with the provisions of this agreement;
- (b) materially restricts the ability of the Commission to supply Biomass (including by materially changing (or preventing) the harvesting of the plantations from which Biomass is supplied for higher value products than Biomass);
- (c) materially restricts the ability of the Buyer to store or process Biomass;
- (d) materially changes the effectiveness, efficiency or cost of the supply of Biomass; or
- (e) otherwise materially affects a party's rights or obligations in connection with this agreement,

the affected party may give notice of the Adjustment Event to the other party.

30.2 A notice of Adjustment Event must give the other party details setting out the nature of the Adjustment Event and the effects on the affected party and the supply of Biomass and an indication of how the affected party proposes to deal with the Adjustment Event.

30.3 The parties must consider and endeavour to agree on:

- (a) whether an event constitutes an Adjustment Event in respect of which a notice may be given under clause 30.1;
- (b) the effect of the Adjustment Event on Biomass supply; and

- (c) the steps to be taken to address the Adjustment Event with the aim of reducing the impact or sharing the benefit (as the case may be) of the Adjustment Event to the extent reasonably practicable.
- 30.4 If the parties are unable to agree any of the matters referred to in clause 30.3 within 30 days after notice of the Adjustment Event has been given by the affected party, the existence of the Adjustment Event, the effect of the Adjustment Event on Biomass supply and the steps to be taken to address the Adjustment Event, will (on the referral of either party) be determined by the Independent Expert.
- 30.5 The parties must continue to perform their respective obligations in accordance with this agreement until all matters in connection with the Adjustment Event are finally determined in accordance with clauses 30.3 and 30.4.
- 30.6 Where the application of this clause 30 results in a variation to the terms of this agreement (including to amounts payable under this agreement), the parties must execute all documents required to formalise the variation to this agreement.

### **31. Force majeure**

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- 31.1 Failure by a party to perform an obligation under this agreement that is not:
- (a) in the case of the Buyer an obligation to pay money to the Commission or to provide Security to the Commission; or
  - (b) caused by circumstances arising from a breach by a party of its obligations under this agreement,
- will be excused to the extent that such failure is caused by or arises from a Force Majeure event beyond the power and control of the Affected Party and without the Affected Party's fault or privity.
- 31.2 The Affected Party shall as promptly as possible give notice thereof to the other party and will also within 10 days of the occurrence of the Force Majeure event notify the other party of particulars of the relevant event and supply, if possible, supporting evidence. The Affected Party must take reasonable and diligent steps to make good and resume compliance with those obligations except that:
- (a) neither party is obliged to settle strikes, lockouts and other labour difficulties on terms which it reasonably considers to be unacceptable;
  - (b) the Commission shall not be obliged to act so as to prejudice public policy and this proviso applies notwithstanding any rule of law, or authority, or power, of the Commission which may be applied or exercised to remove, or to minimise the effects of, a Force Majeure event.
- 31.3 If a Force Majeure event referred to in clause 31.1 continues for a period of not less than 18 calendar months, the Affected Party or, where both

parties are prevented from performing obligations, either of them, may terminate this agreement by notice to the other.

31.4 Subject to clause 31.3, the obligations of the parties under this agreement will resume as soon as the Force Majeure event ceases to have effect.

31.5 If the Commission's failure to supply Biomass is excused by clause 31.1 or for any other reason, the Buyer shall have no claim against the State or the Commission arising from such failure, provided that the Commission will treat the Buyer at least as favourably as any other party to whom the Commission is supplying Forest Products when allocating reductions in supply, unless the reduction in supply is caused by breach of this agreement or any Concurrent Contract by the Buyer.

## **32. Assignment**

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32.1 The Buyer shall not, except to a Related Party or as required under a Financing Agreement, assign or transfer any part of the Buyer's rights or obligations under this agreement without the prior written consent of the Commission.

32.2 Except as permitted under clause 18, the Buyer may not 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 Commission or the General Manager, which will not be unreasonably refused.

32.3 The Commission must not unreasonably withhold its consent to an assignment under clause 32.1 provided:

- (a) all of the Buyer's rights and obligations are to be assigned to the proposed assignee;
- (b) there is no unremedied material breach of this agreement by the Buyer;
- (c) the assignee has the technical expertise and financial and other resources and abilities which are necessary for it to effectively perform the Buyer's rights and obligations under this agreement; and
- (d) the Buyer and the assignee enters into such deeds as are reasonably required by the Commission to ensure that the Buyer's obligations are assumed by the assignee.

32.4 If the Buyer is a corporation any change in control of the Buyer (or if the Buyer is a Subsidiary, any change in control of its holding company) is taken to be an assignment of the Buyer's interest in this agreement. In this clause 32.4:

- (a) 'change in control' means control of the composition of the board of directors or control of more than 50% of the shares with the right to vote in general meetings of the corporation; and
- (b) terms used which are not defined in this agreement have the meanings given to them in the Corporations Act.



32.5 The Commission shall not, except to a Government Authority, assign sublet or transfer any part of the Commission's rights or obligations under this agreement without the prior written consent of the Buyer.

32.6 The Buyer must not unreasonably withhold its consent to an assignment under clause 32.5 provided:

- (a) all of the Commission's rights and obligations are to be assigned to the proposed assignee;
- (b) there is no unremedied material breach of this agreement by the Commission;
- (c) the assignee has the technical expertise and financial and other resources and abilities which are necessary for it to effectively perform the Commission's rights and obligations under this agreement; and
- (d) the Commission and the assignee enters into such deeds as are reasonably required by the Buyer to ensure that the Commission's obligations are assumed by the assignee.

### **33. Governing law**

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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.

### **34. Severance**

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If any part of this agreement is or becomes void, illegal or unenforceable for any reason whatever then in an appropriate case a Court may sever that part from this agreement and all those parts not so severed shall remain in full force and effect and be unaffected by any such severance. The previous sentence does not apply to the extent that the part that is or becomes void, illegal or unenforceable is a material part of this agreement to one or both of the parties.

### **35. Costs**

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35.1 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.

35.2 Each party agrees:

- (a) to pay or reimburse the other party on demand the costs, charges and expenses of the that party reasonably incurred in connection with the enforcement or preservation of any rights made under this agreement (including legal costs on a full indemnity basis); and
- (b) to bear all costs, charges and expenses (including legal costs on a full indemnity basis) of and incidental to the preparation, engrossment, execution and (where applicable) stamping and registration of any Security.

## **36. Non-Disclosure**

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- 36.1 The Commission may publish industry statistics consolidated from information provided by the Buyer under clause 20 but otherwise shall not, without the prior written consent of the Buyer, reveal to any third party (other than to the Minister) any individual Facility or company statistics referred to in clause 20 or any data or technical information provided to the Commission by the Buyer under this agreement.
- 36.2 In this clause the expression "Contract Award Information" means:
- (a) a general description of the goods and/or services the subject of this agreement;
  - (b) the Buyer's name;
  - (c) the total estimated agreement price or value; and
  - (d) documents and other information where disclosure is required under the Freedom of Information Act 1992 (WA) or by any Law, or by tabling in State Parliament, or under a Court order.
- 36.3 The Contract Award Information referred in clause 36.2 will be tabled in State parliament in accordance with clause 59A and 69 of the Act.
- 36.4 The Buyer shall not have, make or bring any Claim against the Commission, the General Manager, or the State for any loss, injury, damage, liability, cost or expense resulting from public disclosure of Contract Award Information.
- 36.5 Notwithstanding any provision of this agreement to the contrary, the powers and responsibilities of the Auditor General for the State under the Auditor General Act 2006 (WA) are not limited or affected by the terms of this agreement.

## **37. Commission documents**

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- 37.1 The Commission will provide the Manual to the Buyer upon request.
- 37.2 The Manual and any other documents or information provided by the Commission to the Buyer in connection with this agreement (**Commission Documents**) will remain the property of the Commission and the Buyer must:
- (a) not use the Commission Documents other than in connection with the performance of the Buyer's obligations under this agreement;
  - (b) not reveal the Commission Documents to any third party without the prior written consent of the Commission; and
  - (c) return the Commission Documents to the Commission upon the expiry or earlier termination of this agreement.

## **38. Notices**

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- 38.1 Any notice to the Buyer or the Commission 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 38.2 or to such other address or facsimile number as that party from time to time may notify to the other party for the purpose of this clause. Proof of posting by prepaid mail or of dispatch of the facsimile shall serve as proof of 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.

38.2 Initial addresses and facsimile numbers of the parties are:

In the case of the Commission:

The Manager  
Business Services Branch  
Forest Products Commission  
Level 1, D Block  
3 Baron-Hay Court  
KENSINGTON WA 6151  
Facsimile: (08) 9363 4601

In the case of the Buyer:

The Secretary  
Western Australia Biomass Pty Ltd  
Suite 6, 11 Rangers Rd  
Neutral Bay  
NSW 2089  
Facsimile: (02) 9904 2628

### **39. Whole of agreement**

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39.1 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. This agreement supersedes all prior negotiations, deeds, arrangements, understandings, agreements and documents with respect to such subject matter.

39.2 Without limiting clause 39.1, this agreement amends and re-states Production Contract 2893 in its entirety.

## **40. Miscellaneous**

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### **40.1 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.

### **40.2 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 Commission and the Buyer.

### **40.3 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.

### **40.4 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.

### **40.5 No merger**

The warranties, undertakings and indemnities in this agreement do not merge on completion of the sale and purchase of Biomass.

### **40.6 Survival of indemnities**

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

### **40.7 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.

### **40.8 Further assurances**

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

#### 40.9 Commission may act through others

Any act required to be performed by the Commission under this agreement may be performed by an Authorised Officer.

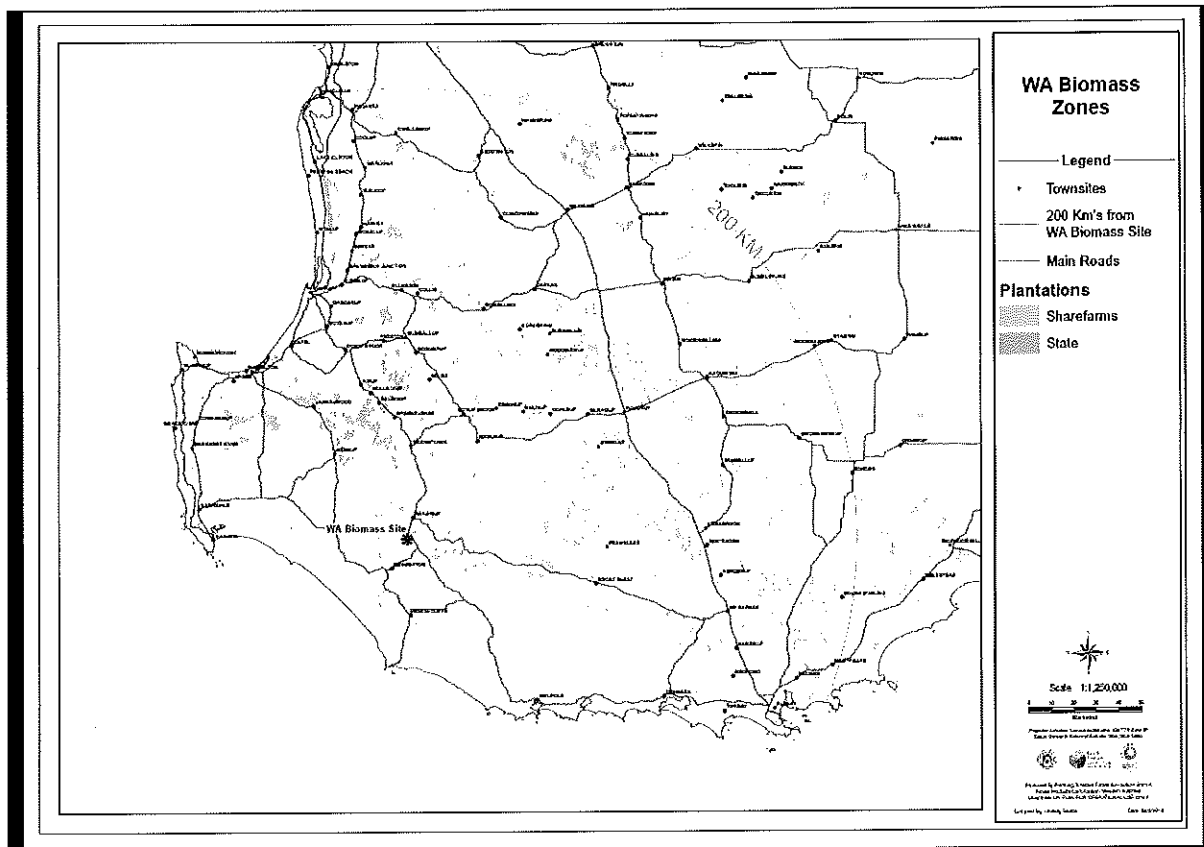
#### 40.10 GST

If this agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing suffered or incurred by another party, or to satisfy demand under any indemnity or enforcement of a Security or Security Interest for the benefit of that other party the amount required to be paid, reimbursed or contributed by the first party will be the sum of:

- (a) the amount of such expense loss or outgoing indemnified amount or security amount in each case net of Input Tax Credits (if any) to which the other party is entitled (**net amount**) and
- (b) if the other party's recovery from the first party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the other party meets the GST liability, it retains the net amount.

# Schedule 1. Biomass Supply Zone



## Schedule 2.

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### A1. Biomass quantity

	Years commencing 1 July 2016 – 2036*
Minimum Annual Intake per Year	90,000 Delivered Metric Tonnes (42,300 BDMT)
Additional Biomass** per Year	Up to 60,000 Delivered Metric Tonnes (28,200 BDMT)
Total - Biomass Intake** per Year	90,000 - 150,000 Delivered Metric Tonnes (42,300 - 70,500 BDMT)

\*Note if the period of intake in the first year or the last year is less than the entire Year then the quantity will be adjusted pro-rata as applicable.

\*\*Note the Buyer is only required to purchase Additional Biomass which it agrees to purchase under clause 8.1. The quantities shown represent the parties' contemplated supply quantities as at the date of this agreement but are not binding on the parties and do not constitute a representation by either party that any particular quantity of Additional Biomass will be available to the Buyer or will be purchased by the Buyer.

The proportion of the Minimum Annual Intake to be delivered as Logs is not to exceed 15% without prior agreement in writing by the Buyer.

The minimum quantity of Biomass to be delivered to the Site in any month must not be less than 80% of the Minimum Annual Intake divided by 12 unless otherwise agreed in writing between the parties.

The maximum quantity of Biomass to be delivered to the Site in any month must not exceed 150% of the Minimum Annual Intake divided by 12 unless otherwise agreed in writing between the parties.

For the avoidance of doubt, if there are inconsistencies or discrepancies between the Biomass Intake represented in Delivered Metric Tonnes and the approximate equivalent represented in Bone Dry Metric Tonnes, the Biomass Intake represented in Delivered Metric Tonne will prevail for the purpose of determining the quantity of the Biomass.

### A2. Source of Biomass

Timber Supply Area containing Hardwood or Softwood plantations.

### B. Term

From the Commencement Date until 31 December 2036.

The parties may extend for a period of 5 years by agreement made not later than 6 months prior to the expiry of the Term.

**C. Prepayment Deposit**

\$25,000

**D. Site**

Forest Lease No.1994/97, Palings Road, Diamond Tree, Manjimup

**E. Address of returns (clause 20.4)**

All returns shall be sent to the Commission at Forest Products Commission, PO 236, Bunbury WA 6231

**F. System of Forest Product measurement**

1. Weighing at a weigh bridge as required under Schedule 1 Part C of the Regulations.
2. Bone Dry Metric Tonne measurement

The parties agree that the delivered quantity of Biomass shall be converted to Bone Dry Metric Tonnes as follows. That method and procedure may be changed from time to time by mutual agreement between the Buyer and the Commission.

1) Residue and Processed Biomass

a) Method and procedure for measuring Bone Dry Metric Tonne:

- i) The Commission agrees to supply the Buyer with Biomass containing a moisture content in accordance with the Specifications.
- ii) The Buyer shall collect samples of Biomass to determine the quantity of Biomass in Bone Dry Metric Tonnes. The first three truck loads from a Coupe shall be sampled and thereafter random samples will be taken no less frequently than one truck load out of every three, or as otherwise agreed to by the parties.
- iii) The Biomass samples will be collected after each truck load has been weighed at the Site. The relevant Log Delivery Note details shall accompany each Biomass sample.

b) The Buyer shall have the Biomass analysed using the BDMT Measurement Equipment.

- i) The quantity of Biomass delivered by the Commission to the Buyer will be converted into Bone Dry Metric Tonnes on a daily basis.
- ii) The Buyer shall be responsible for all costs incurred in the Biomass sampling and determination of Bone Dry Metric Tonne methods and procedures.

c) Equipment and Weighing for the purposes of converting to Bone Dry Metric Tonnes

- i) The Commission shall have the right at any time to have an Authorised Officer attend any weighing by the Buyer and to inspect the BDMT Measurement Equipment.



- ii) The Buyer shall dry and weigh all samples of Biomass delivered to the Facility using the BDMT Measurement Equipment. The Buyer shall use all reasonable endeavours to ensure that the BDMT Measurement Equipment is maintained and calibrated in accordance with generally accepted industry standards.
- iii) If the Commission should at any time question the accuracy of the weights, the Commission shall so advise the Buyer and the Buyer shall permit an Authorised Officer to test the BDMT Measurement Equipment or methods, and the Commission shall ensure that such test does not interfere in the operations of the Facility.

## 2) Logs

As soon as practical after delivery samples shall be prepared from the Logs and the procedures in 1) above shall be undertaken to determine the Bone Dry Metric Tonnes of Logs delivered.

If the Commission reasonably determines that the BDMT Measurement Equipment or methods are in error, the Commission will notify the Buyer. Within thirty (30) days thereafter, the Buyer shall advise the Commission of the amount and the estimated duration of the error, if the error can be found. The Commission shall make adjustments to the affected invoices so that the weight is paid by the Buyer as if there had been no error in the BDMT Measurement Equipment. In the event that the Buyer cannot establish the amount and duration of the error, the parties shall determine the number of Tonnes of each delivery invoiced during the last half of the period since the most recent calibration of the weighing equipment. Should the parties be unable to agree on this determination, it shall be resolved in accordance with in accordance with the Dispute Resolution Procedure set out in clause 24. The parties may also utilise an Independent Expert in accordance with clause 25.

## **G. Security**

\$600,000 or 11.5% of the aggregate Price of the Agreed Annual Biomass Intake for the most recently completed Year during the Term (at the Commission's election), less, in either case, any Prepayment Deposit paid by the Buyer.

## **H. Value-adding requirements**

Not applicable

### **Schedule 3. Biomass Prices, Delivered Price plus Waiting-time Charge**

#### **A. Gross Stumpage**

	<b>Price per Bone Dry Metric Tonne</b>	<b>Approximate equivalent per Delivered Metric Tonne</b>
<b>Residue</b>	<b>\$7.36</b>	<b>\$4.10</b>
<b>Processed Biomass</b>	<b>\$10.86</b>	<b>\$5.79</b>
<b>Log</b>	<b>\$29.02</b>	<b>\$13.71</b>

For the avoidance of doubt, the Price per Bone Dry Metric Tonne will prevail for the purpose of calculating the Price of the Biomass.

#### **B. Delivered Price**

The Delivered Price per BDMT for each of Processed Biomass and Log will be calculated by the Commission prior to the Commencement Date as follows:

Delivered Price = Gross Stumpage + Product Contractor Costs

Where:

**Delivered Price** is the Delivered Price for the Relevant Product.

**Gross Stumpage** is the Gross Stumpage for the Relevant Product.

**Product Contractor Costs** is the projected Contractor Costs for the Relevant Product over the first Supply Period. The Product Contractor Costs will:

- (a) be calculated as the average costs of the projected production and delivery of the Relevant Product over the first Supply Period;
- (b) be derived from the Schedules of Rates applying as at the Commencement Date;
- (c) be calculated without regard to increases in Contractor rates, including as a result of increases in the costs of labour or fuel; and
- (d) be calculated applying the principles set out below.

**Relevant Product** is Processed Biomass or Log.

The Commission must apply the following principles in calculating the Product Contractor Costs:

- 1 the Price must at all times be consistent with the obligations of the Commission under the Act and Regulations and all other applicable Laws including, without limitation, sections 12 and 59 of the Act;
- 2 to the extent not inconsistent with clause 1, Biomass must be supplied under this agreement:
  - (a) as efficiently and as cost effectively as is reasonably practicable having regard to the Commissions' obligations under the Act;
  - (b) at a Price which:
    - reflects the Gross Stumpage (which incorporates the Commission's profit margin) plus the Contractor Costs (on the basis that the Commission will use all reasonable endeavours to minimise Contractor Costs and provided that the Commission will act in accordance with best operating practices and in accordance with good commercial practices with respect to Contractor Costs);
    - with respect to the Contractor Costs component, reflects the costs of the Contractors producing, or producing and delivering (as the case may be) Biomass to the Buyer and does not subsidise the costs of the provision of any other services provided by the Contractor to the Commission; and
    - reflects the actual moisture content of the Biomass being supplied under this agreement; and
  - (c) on the basis that the Commission will disclose its costs in connection with Biomass supply, including the relevant Schedule of Rates and calculations used to determine the Product Contractor Costs, to the Buyer in a detailed and transparent manner (subject to compliance with all applicable Laws and third party contractual requirements).

As at the date of this agreement, the Commission's best estimate of the Delivered Price (based on Gross Stumpage and Contractor Costs as at 31 December 2013) is:

	<b>Price per Delivered Metric Tonne*</b>
<b>Processed Biomass</b>	<b>\$46.56</b>
<b>Log</b>	<b>\$47.54</b>

\* The amounts shown are not binding on the parties. The actual Delivered Price to apply from the Commencement Date will be calculated as set out above.

The Delivered Price will be reviewed in accordance with Schedule 4.

### **C. Dry Biomass Incentive**

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The average fibre content of Biomass delivered as Processed Biomass for any Year will be determined and an incentive will be applied as follows:

- 1 Where the proportion which the BDMTs bears to the Delivered Metric Tonnes of Biomass delivered as Processed Biomass for any Year is greater than or equal to 55% and less than or equal to 59.9%, the Buyer shall pay the Commission an additional amount of \$1.00 per BDMT for all Processed Biomass supplied during that Year; or
- 2 Where the proportion which the BDMTs bears to the Delivered Metric Tonnes of Biomass delivered as Processed Biomass for any Year is more than or equal to 60.0%, the Buyer shall pay the Commission an additional amount of \$2.00 per BDMT for all Processed Biomass supplied during that Year.

### **Review of Dry Biomass Incentive**

The amount of the Dry Biomass Incentive shall be varied with effect from and including 1st July in each Year occurring after 1 January 2014 in proportion with any percentage increase or decrease in the Consumer Price Index over the period of 12 months ending on the 31st March immediately preceding that 1st July.

### **D. Roadside Collection**

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The Price applicable for Roadside Collection shall be made up of (a) the Gross Stumpage and (b) that part of the Contractor Costs which represents the actual Contractor costs incurred by the Commission in harvesting and extracting the Biomass.

### **E. Contracted Additional Biomass**

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The Price for Contracted Additional Biomass is as agreed under clause 8.1.

### **F. Waiting-time Charge (excluding GST)**

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Price per half hour or part thereof	(Price)
	\$86.99

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### **G. Schedule of Rates**

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The Commission will notify the Buyer of the Contractor Costs in advance of any deliveries for a Year by providing to the Buyer the relevant Schedules of Rates for that Year in the following form (as applicable for the relevant Biomass product) or any other form agreed between the parties.

The Schedules of Rates will distinguish that part of the Contractor Costs which relates to the costs of harvesting and extracting (and so is included in the Price applicable for Roadside Collection) from that part of the Contractor Costs which relates to delivery.

## Schedule of Rates - Processed Biomass

---

Contractor Name:

Product: Processed Biomass

Operation type:

Specification:  
Description:

Operative Date:

Basis of Price:

Value (EXCL GST) \$/BDMT

A.PRODUCTION (Fall, Extract, Extract, Chip, Load)

B. CARTAGE

(VARIES BY DISTANCE) (Km) 0 – 20  
20.1 – 30  
30.1 – 40  
40.1 – 50  
50.1 – 60  
60.1 – 70  
70.1 – 80  
80.1 - 90

Etc up to 400km

## Schedule of Rates - Logs

---

Contractor Name:

Product: Biomass Log

Operation type:

Specification:

Description:

Operative Date:

Basis of Price:

Value (EXCL GST) \$/BDMT

A.PRODUCTION (Fall, Extract, Load)

B. CARTAGE

(VARIES BY DISTANCE) (Km) 0 – 20  
20.1 – 30  
30.1 – 40  
40.1 – 50  
50.1 – 60  
60.1 – 70  
70.1 – 80  
80.1 - 90

Etc up to 400km

**Schedule of Rates - Residue**

---

Contractor Name:

Product:                Residue

Operation type:

Specification:  
Description:

Operative Date:

Basis of Price:

Value (Excluding GST) \$/BDMT

PRODUCTION (Fall, Extract)



## **Schedule 4. Variation of the Price**

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The Price will be varied as follows:

### **A. Annual and biannual reviews**

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#### 1) Gross Stumpage

The Gross Stumpage for each category of Biomass shall be varied with effect from and including 1st July in each Year occurring after 1 January 2014 in proportion with any percentage increase or decrease in the Consumer Price Index over the period of 12 months ending on the 31st March immediately preceding that 1st July.

#### 2) Delivered Price

The Delivered Price for each category of Biomass shall be varied with effect from and including 1st July and 31st December in each Year occurring after 1 January 2014, other than a Review Date (as defined in item B 1) of this Schedule, as follows:

- a) for that portion of the Delivered Price equal to the Gross Stumpage, by any percentage increase or decrease in the Consumer Price Index over the period of 6 months ending on the 31st March immediately preceding a 1st July review and the 30th September immediately preceding a 31st December review; and
- b) for the balance of the Delivered Price (i.e. that portion of the Delivered Price not including Gross Stumpage), by the aggregate of:
  - (i) 80% of any percentage increase or decrease in the Consumer Price Index over the period of 6 months ending on the 31st March immediately preceding a 1st July review and the 30th September immediately preceding a 31st December review; and
  - (ii) 20% of any percentage increase or decrease in the daily average of the Fuel Reference Price over the period of 6 months ending on the 14th June immediately preceding a 1st July review and the 14th December immediately preceding a 31st December review;
- c) if the average daily Fuel Reference Price including GST and the Fuel Tax Credit (**Average Price**) during any month (**Spike Month**) is more than 10% higher or lower than the Average Price for the preceding 6 month period then an adjustment will apply for the Spike Month as follows:

- the variance for each month will be calculated in accordance with the following formula:

Variance = monthly average daily Fuel Reference Price ÷ preceding Average Price for the preceding 6 month period.

When the variance is between 0.90 and 1.10 inclusive, no adjustment will apply.

When the variance is greater than 1.10 or less than 0.90, the following formula will apply:

Adjustment = (variance - 1) x 0.20 x the sum of all Contractor Costs for the Spike Month.

- the variance and adjustment will be calculated by the Commission and notified by the Commission to the Buyer as soon as practicable after the end of each Spike Month.
- the Commission will invoice any positive adjustment amount and credit any negative adjustment amount in the next invoice it issues to the Buyer.

### 3) Waiting-time Charge

The Waiting-time Charge shall be varied with effect from and including the:

- a) 1st January of each Year by the same percentage increase or decrease that applies to the Schedule of Rates under any Contract between the Commission and a Contractor over the six month period preceding that 1st January; and
- b) 1st July of each Year by the same percentage increase or decrease that applies to the Schedule of Rates under any contract between the Commission and a Contractor over the six month period preceding that 1st July.

### 4) Consumer Price Index

If the basis upon which the Consumer Price Index is calculated is varied in any way from the basis current at the date of this agreement, or if there is any change in the factors taken into account in determining it or if it shall no longer be published by the Australian Bureau of Statistics or its successor or equivalent body then, if the parties fail to agree upon another index or formula to take its place, the parties hereto shall determine a comparable method of adjustment acting on advice from the Australian Statistician.

### 5) Fuel Reference Price

If the basis upon which the Fuel Reference Price is calculated is varied in any way from the basis current at the date of this agreement, or if there is any change in the factors taken into account in determining it or if it shall no longer be published by the Australian Institute of Petroleum or its successor or equivalent body then, if the parties fail to agree upon another reference price to take its place, either party may refer the determination of replacement fuel reference price to the Independent Expert.

### 6) GST

If a GST applies to any variation under this Schedule 4 of the Price or any component of the Price then the provisions of clauses 4.5 and 4.6 of the agreement shall apply to the amount payable to the General Manager by the Buyer by reason of such variation.

### 7) Contractor Costs (if applicable)

The Contractor Costs shall be varied with effect from and including the:

- a) 1st January of each Year by the same percentage increase or decrease that applies to the Schedule of Rates under any contract between the Commission and a Contractor over the six month period preceding that 1st January; and
- b) 1st July of each Year by the same percentage increase or decrease that applies to the Schedule of Rates under any Contract between the Commission and a Contractor over the six month period preceding that 1st July.

## **B. Review for each Supply Period**

---

The Delivered Price will be reviewed for every Supply Period during the Term as follows:

### 1) Timing of review

The Delivered Price will be reviewed with effect from:

- a) 1 July 2019 during the first Supply Period; and
- b) the commencement of each subsequent Supply Period,

each such date being a **Review Date**.

### 2) Review process

The parties must meet not later than 90 days before each Review Date and use their reasonable endeavours in good faith to agree the Delivered Price which is to apply during each Supply Period (or, in respect of the first Supply Period, from 1 July 2019 until the end of that Supply Period) (**Reviewed Delivered Price**).

The Reviewed Delivered Price per BDMT for each of Processed Biomass and Log will be calculated as follows:

**Reviewed Delivered Price = Gross Stumpage + Reviewed Product Contractor Costs**

Where:

**Reviewed Delivered Price** is the Reviewed Delivered Price for the Relevant Product.

**Gross Stumpage** is the Gross Stumpage for the Relevant Product.

**Reviewed Product Contractor Costs** is the projected Contractor Costs for the Relevant Product over the relevant Supply Period. The Reviewed Product Contractor Costs will:

- (a) be calculated as the average costs of the projected production and delivery of the Relevant Product over the relevant Supply Period;
- (b) be derived from the Schedules of Rates applying as at the commencement of the relevant Supply Period;
- (c) be calculated without regard to increases in Contractor rates, including as a result of increases in the costs of labour or fuel; and

- (d) be calculated applying the principles set out below.

**Relevant Product** is Processed Biomass or Log.

The parties must apply the following principles in calculating the Reviewed Product Contractor Costs:

- a) the Reviewed Delivered Price must at all times be consistent with the obligations of the Commission under the Act and Regulations and all other applicable Laws including, without limitation, sections 12 and 59 of the Act;
- b) to the extent not inconsistent with paragraph a), Biomass must be supplied under this agreement:
  - (i) as efficiently and as cost effectively as reasonably practicable having regard to the Commissions' obligations under the Act;
  - (ii) at a Price which:
    - reflects Gross Stumpage (which incorporates the Commission's profit margin) plus the Contractor Costs (on the basis that the Commission will use all reasonable endeavours to minimise the Contractor Costs and provided that the Commission will act in accordance with best operating practices and in accordance with good commercial practices with respect to Contractor Costs);
    - with respect to the Contractor Costs component, reflects the costs of the Contractors producing, or producing and delivering (as the case may be) Biomass to the Buyer and does not subsidise the costs of the provision of any other services provided by the Contractor to the Commission; and
    - reflects the actual moisture content of the Biomass being supplied under this agreement;
  - (iii) such that the Biomass Intake constitutes a reliable, efficient and commercially viable fuel supply for the Facility to operate profitably (assuming that the Facility is operated in accordance with best operating practices for facilities of its type and in accordance with good commercial practices);
  - (iv) on the basis that the Commission will disclose its costs in connection with Biomass supply, including the relevant Schedule of Rates and calculations used to determine the Reviewed Product Contractor Costs, to the Buyer in a detailed and transparent manner (subject to compliance with all applicable Laws and third party contractual requirements); and
  - (v) on the basis that the Buyer will disclose the factors relevant to whether the Biomass Intake constitutes a reliable, efficient and commercially viable fuel supply for the Facility to operate profitably in a detailed and transparent manner (subject to compliance with all applicable Laws and third party contractual requirements).

If the parties do not agree the Reviewed Delivered Price on or before the applicable Review Date, either party may refer the determination of the Reviewed Delivered Price to the Independent Expert.

As soon as practicable after the Reviewed Delivered Price in respect of a Supply Period is agreed or determined, the parties will procure that any underpayment of the Price since the Review Date is paid or any overpayment is repaid.

### 3) Adjustment to Reviewed Delivered Price

Once a Reviewed Delivered Price is agreed or determined, that Reviewed Delivered Price will apply:

- a) in respect of the first Supply Period, from 1 July 2019 until the end of that Supply Period; and
- b) in respect of each subsequent Supply Period, for the entire Supply Period,

except that the Reviewed Delivered Price will be subject to the annual reviews set out in item A 2) of this Schedule.

## **Schedule 5. Specifications**

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### **Specification: Processed Biomass**

- a) Sourced from plantation
- b) Contain no more than one percent (1%) combined by weight of bone, plastic, metal and petroleum products.
- c) Contain no more than two percent (2%) combined by weight of earth, soil, rock, dirt, sand and clay.
- d) Glue or paint, the latter other than the amount usually used for the purpose of tree marking prior to thinning operations, can only be accepted with prior approval.
- e) Must be free from any other foreign material.
- f) Must not contain any chemical preservative or have been subject to any chemical treatment process.
- g) The Processed Biomass in any Year will be produced from trees and parts of trees that have been severed from the stump before being chipped, milled, mulched and/or mechanically fragmented into chips and small pieces.
- h) All reasonable endeavours will be used to allow Biomass to reduce the moisture content prior to delivery. Nothing in this clause prevents the Commission acting reasonably and reducing the time the Trees dry if the Trees need to be removed earlier to facilitate the Commission's day to day activities such as replanting the Coupe or reducing fire risk as determined by an Authorised Officer.
- i) All reasonable endeavours will be used to reduce moisture content before loading and carting.
- j) Individual piece size shall not be greater than 75 mm in any direction.

### **Specification: Residue**

- a) Sourced from plantation
- b) Contains no more than one percent (1%) combined by weight of bone, earth, soil, rock, dirt, plastic, sand, clay, metal and petroleum products.
- c) Must be free from any other foreign material (i.e. material which was not present in the Coupe prior to the commencement of harvesting).
- d) Must not contain any chemical preservative or have been subject to any chemical treatment process.

### **Specification: Log**

- a) Sourced from plantation
- b) The length of a log with large end diameter greater than 0.8m is no more than 3.4m.
- c) Maximum bend is 0.3m deviation in any 3.0m length.
- d) Maximum width including branches is 900mm.
- e) Shattered ends of logs not to exceed 50% of the end face measured perpendicular to the estimated centre line of the log.
- f) Bark is permitted.
- g) Contains no more than one percent (1%) combined by weight of bone, earth, soil, rock, dirt, plastic, sand, clay, metal and petroleum products.

- h) No paint, other than the amount usually used for the purpose of tree marking prior to harvesting operations, can be accepted without prior approval.
- i) Must be free from any other foreign material.
- j) Must not contain any chemical preservative or have been subject to any chemical treatment process.
- k) While logs will often be needed to be delivered directly from the forest, where possible, reasonable endeavours will be used to reduce moisture content before loading and carting.

**Specification: All**

All Biomass must comply with the following:-

- a) it must be a product of a harvesting operation (including thinnings and coppicing) approved under relevant Commonwealth, State or Territory planning and approval processes;
- b) it must be biomass from a plantation that is managed in accordance with:
  - i) a code of practice approved for a State under regulation 4B of the Export Control (Unprocessed Wood) Regulations; or
  - ii) if a code of practice has not been approved for a State as required under subparagraph (i), Australian Standard AS 4708—2007—The Australian Forestry Standard; and
- c) it must be taken from land that was not cleared of native vegetation after 31 December 1989 to establish the plantation.

## **Schedule 6. Supply Period Plan and Annual Working Plan**

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The Supply Period Plan referred in clause 7.1 will contain information including:-

1. The expected location and amounts of Forest Products that will become Biomass in the Supply Period.
2. The location and quantity of any backlog of Biomass (such as Residue areas and stockpiles) which the Commission would like the Buyer to remove or the Buyer to take delivery of as a matter of priority at the commencement of the Supply Period.
3. The expected Contractors to be employed by either party for the Supply Period, a summary of equipment and techniques to be used by each Contractor and the expected quantity of Biomass to be produced and delivered to the Site by each Contractor.
4. An estimation of weighted average haul distances and likely haulage costs where it is expected Delivered Price will not apply. Average weighted haul distances will be accurate to +/-15%.
5. An estimation of Additional Biomass and the amount that the Biomass Intake is expected to exceed the Minimum Annual Intake for the Supply Period.
6. Confirmation of the Code and Manual applied during the Supply Period.
7. A forecast of Biomass Intake for the Supply Period immediately following the Supply Period which is the subject of the current Supply Period Plan.
8. Specific additional compliance and operational issues proposed by the Commission.
9. Any other items as agreed between the parties from time to time.

The Annual Working Plan referred in clause 7.6 will contain the operational requirements for the following Year's operations including:-

1. The delivery schedule for the following Year.
2. A review of the previous Year's operations and Biomass supply.
3. The expected location and amounts of Forest Products that will become Biomass in the Year.
4. Where applicable, the location and quantity of any backlog of Biomass such as Residue areas and stockpiles which the Commission would like the Buyer to remove or the Buyer to take delivery of as a matter of priority at the commencement of the Year.
5. The Contractors to be engaged by either party for the following Year, and the expected quantity of Biomass to be produced and delivered to the Site by those Contractors.
6. An estimation of Additional Biomass and the amount that the Biomass Intake is expected to exceed the Minimum Annual Intake for the Supply Period.
7. An estimation of the Buyer's ability to take delivery of Biomass in addition to the Minimum Annual Intake.



8. A forecast of Biomass Intake for the Year immediately following the Year which is the subject of the current Annual Working Plan.
9. A plan to manage the drying time for Biomass to reduce its moisture content to the extent feasible, taking into account consideration factors including seasonality, production logistics, and fire control requirements.
10. Any proposed changes to the Manual and Code identified by either party.
11. Any specific additional compliance and operational issues proposed by the Commission.
12. Details of the operation of the Site, such as Delivery procedures, Log Yard Procedures, safe truck travel routes and unloading, opening hours, planned shut downs.
13. Planned shutdowns by the Commission or Contractors.
14. Authorised Officer access arrangements and verification of equipment such as BDMT Measurement Equipment.
15. Administrative processes related to the agreement such as handling of Log Delivery Notes, Bone Dry Metric Tonne determinations, adjustments, discussion of Specifications and compliance.
16. Planned accreditation and audit requirements.
17. Any occupational health and safety issues and reviews.
18. Specific requirements of the Clean Energy Regulator or replacement, to ensure the Biomass meets the requirements necessary to generate renewable energy certificates or equivalent (provided that nothing in this item imposes any additional obligation on the Commission in connection with the supply of Biomass to those imposed elsewhere in this agreement).
19. Any other items as agreed between the parties from time to time.

## **Schedule 7. Log Yard Procedure**

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### **Log Yard Procedure**

1. The Buyer must prepare and provide a Log Yard Procedure acceptable to the Commission before the start of deliveries.
2. The Log Yard Procedure must include the following:
  - (a) Any appropriate actions to ensure compliance with Chain of Responsibility Legislation; and
  - (b) the name of a contact person; and
  - (c) the entry and exit routes for vehicles and persons; and
  - (d) relevant occupational safety and health precautions having reference to
    - (i) the OSH Act; and
    - (ii) the OSH Regulation; and
    - (iii) relevant publications from Forest Industries Federation of WA relating to workplace safety; and
  - (e) evacuation routes; and
  - (f) induction processes; and
  - (g) map or maps; and
  - (h) information on the unloading of trucks which encompasses –
    - (i) unloading equipment and that equipment's capacity to safely unload all deliveries; and
    - (ii) the location of the truck driver during unloading; and
    - (iii) unstrapping points; and
    - (iv) unloading location; and
    - (v) clean down points; and
  - (i) the location where rejected logs are stored; and
  - (j) the method of reporting non-compliance to an Authorised Officer (e.g. overloading, substandard strapping or any other matter contravening the Log Yard Procedure); and
  - (k) the communication system; and
  - (l) contingencies for unloading in the event of a machine breakdown, including the measures to advise an Authorised Officer of the Buyer's inability to accommodate or unload trucks.
3. The Log Yard Procedure may only be varied in writing, signed by both parties.

**Business Hours**

4. The Commission must deliver Biomass during Business Hours, and the Buyer must keep the Site open during Business Hours unless otherwise agreed in writing between the parties.

**Processing Plant**

5. The Buyer must ensure that the Facility is operational throughout the Term and have contingencies to cover any breakdowns.
6. The Buyer must, at its own cost, provide all necessary personnel and unloading facilities and carry out all unloading operations at the Site.
7. The Facility, in the sole opinion of the Authorised Officer, must be suitable for effectively unloading all contracted Biomass.

**Unloading Trucks**

8. During the Delivery Hours, the Buyer shall at its own cost provide all necessary personnel and unloading facilities and carry out all unloading operations except to the extent otherwise specified in clause 9.

## **Schedule 8. Tripartite Agreement**

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Consent Deed – Fuel Supply Agreement

**Forest Products Commission**  
**Western Australia Biomass Pty Ltd**  
**[Financing Entity]**  
**[Security Trustee]**

**Date**

---

**Parties**

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1. **Forest Products Commission** of Level 1, D Block, 3 Baron-Hay Court, Kensington, Western Australia (the **Supplier**);
2. **Western Australia Biomass Pty Ltd (ACN 122 951 660)** of Suite 6 11 Rangers Rd, Neutral Bay, NSW 2089 (the **Mortgagor**);
3. **[Insert Financier Details] (Agent)**; and
4. **[Insert Security Trustee Details] (the Security Trustee)**.

- 
- A. The Supplier and the Mortgagor are parties to a Fuel Supply Agreement for the supply of Fuel dated 10 August 2007, and as amended from time to time (the **Agreement**).
  - B. The Mortgagor has charged its rights under and interest in the Agreement in favour of the Security Trustee under a Deed of Charge dated on or about the date of this Deed (the **Security**).
  - C. The Mortgagor has requested the Supplier, and the Supplier has agreed, to enter into this Deed.

It is agreed as follows.

## 1. Definitions and Interpretation

---

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Agreement** has the meaning given in Recital A.

**Business Day** means a weekday on which banks are open in Perth and Sydney.

**Default** means:

- (a) any material breach by the Mortgagor of any of its obligations under the Agreement or any event of default (however defined in the Agreement); or
- (b) any other event or circumstance which, alone or with the lapse of time or notice or both, would entitle the Supplier to terminate or rescind the Agreement or treat it as repudiated or suspend the Supplier's performance of any material obligations under it.

**Enforcing Party** means the Security Trustee or any receiver, receiver and manager, administrator, agent or attorney appointed under the Security.

**Facilities Agreement** means the Facilities Agreement dated on or about the date of this Deed between the Mortgagor, the Agent[, the Security Trustee] and the Participants under which the Participants have agreed to provide the Mortgagor with financial accommodation.

**Participant** means a bank or financial institution named in schedule 1 to the Facilities Agreement or that has otherwise become a Participant under the Facilities Agreement.

**Plant** means the biomass electricity generation plant to be constructed, owned and operated by the Mortgagor at [                      ], Western Australia.

**Power** means any right, discretion, power or remedy, whether express or implied. It includes accepting repudiation and granting waivers.

**Relevant Action** means any legal action or proceedings relating to this Deed.

**Security** has the meaning given in Recital B.

**Security Trust** means the trust known as [WA Biomass Plant – Security Trust] established under clause [XX] of the Security Trust Deed.

**Security Trust Deed** means the Security Trust Deed dated on or about the date of this Deed between, among others, the Security Trustee and the Mortgagor.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a clause or schedule is a reference to a clause of, or schedule to, this Deed.
- (f) A reference to a party to this Deed or another agreement or document includes the party's successors and permitted substitutes or assigns.
- (g) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (h) A reference to **writing** includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (i) A reference to **conduct** includes an omission, statement or undertaking, whether or not in writing.
- (j) The meaning of terms is not limited by specific examples introduced by **including**, or **for example**, or similar expressions.
- (k) All references to **time** are to Sydney time.

- (l) Nothing in this Deed is to be interpreted against a party on the ground that the party put it forward.

### **1.3 Document or agreement**

A reference to:

- (a) an **agreement** includes a security interest, guarantee, undertaking, deed, agreement or legally enforceable arrangement whether or not in writing; and
- (b) a **document** includes an agreement (as so defined) in writing or a certificate, notice, instrument or document.

A reference to a specific agreement or document includes it as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by this Deed.

### **1.4 Inconsistency**

In the event of any inconsistency between this Deed and the Agreement, this Deed will prevail.

### **1.5 Definitions in the Agreement**

Definitions in the Agreement apply in this Deed unless the term is otherwise defined in this Deed or the context requires otherwise.

### **1.6 Capacity of Security Trustee**

The Security Trustee enters this Deed as trustee for the beneficiaries of the Security Trust without incurring liability in any other capacity and with recourse limited to the Security Trustee's right of indemnity out of the assets of the Security Trust and at law.]

## **2. Consent and Acknowledgment**

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### **2.1 By the Supplier**

The Supplier consents to the creation of the Security and acknowledges that:

- (a) **(no Default)** neither the creation of the Security nor the exercise of any Powers under the Security will of itself contravene or constitute a Default under



the Agreement or entitle the Supplier to exercise any Power (including of termination) under it;

- (b) **(enforcement)** at any time after commencement of enforcement of the Security, any Enforcing Party may exercise all or any of the Powers, and perform all or any of the obligations, of the Mortgagor under or in relation to the Agreement as if it were the Mortgagor to the exclusion of the Mortgagor;
- (c) **(not liable)** without limiting the liabilities of the Mortgagor (which continues to be responsible for the performance of its obligations under the Agreement), no Enforcing Party will be liable, or taken to have assumed liability, for any liability of the Mortgagor under the Agreement by reason only of the Security or the exercise in accordance with the Security of any of the Mortgagor's Powers under the Agreement;
- (d) **(ineffective)** having regard to its obligations under the Security and the Security Trust Deed, the Mortgagor cannot:
  - (i) assign, materially amend or vary, or consent to any assignment, material amendment or variation of;
  - (ii) avoid, release, surrender, terminate, rescind, discharge (other than by performance) or accept repudiation of; or
  - (iii) do or permit anything which would enable or give grounds to the Supplier to do anything referred to in sub-paragraphs (i) or (ii) in relation to,

the Agreement without the prior written consent of the Agent which consent cannot be unreasonably delayed or withheld. Anything done without such consent will be ineffective as between the parties to this Deed. If the Agent withholds its consent the Agent must advise the Mortgagor and the Supplier in writing of the grounds on which it has withheld its consent; and

- (e) **(no set-off)** at the date of this Deed, the Supplier has no right of set-off or other equity in relation to the Agreement and the amounts payable under it.

## 2.2 By the Mortgagor

The Mortgagor is bound by, and shall co-operate in the implementation of, this Deed. The Mortgagor shall obtain such consents as are necessary under clause 2.1(d). The Mortgagor acknowledges that this Deed is only intended to benefit the Security Trustee and the Agent. The Mortgagor shall remain liable for all its obligations under the Agreement in the circumstances contemplated under clause 2.1(b).

## 2.3 Direction of Payment

The Mortgagor irrevocably authorises and directs the Supplier to pay as the Agent directs all amounts which are or at any time become due to the Mortgagor under the Agreement to the account stipulated pursuant to the Agreement or (if the Agent so notifies) notified by the Agent from time to time free of any set-off or other deduction except as allowed under the Agreement. This clause of itself is not intended to create any security interest.

## 3. Representations and Warranties

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Each party makes the following representations and warranties in relation to itself for the benefit of each other party.

- (a) **(Status)** It is a corporation validly constituted and existing under the laws of its place of incorporation as stated above.
- (b) **(Corporate power)** It has the corporate power to enter into and perform its obligations under this Deed and (if it is a party) the Agreement and to carry out the transactions contemplated by those documents.
- (c) **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of this Deed and (if it is a party) the Agreement and to carry out the transactions contemplated by those documents.
- (d) **(Other authorisations)** In the case of the Supplier, it has obtained all consents, permissions and approvals, and has entered into all arrangements

which it is required to do in order for it to supply Fuel to the Mortgagor and grant the Mortgagor all rights, licences and permits in accordance with the terms of the Agreement.

- (e) **(Documents binding)** This Deed and (if it is a party) the Agreement are its valid and binding obligations enforceable against it in accordance with their terms subject to any necessary stamping and the principles of equity.
- (f) **(Transactions permitted)** The execution and performance by it of this Deed and (if it is a party) the Agreement and each transaction contemplated under those documents did not and will not violate in any respect any provision of:
  - (i) any law or treaty or any judgment, ruling, order or decree binding on it;
  - (ii) its constitution or other constituent documents; or
  - (iii) any other document or agreement which is binding on it or its assets.
- (g) **(No reliance)** It has not entered into this Deed in reliance on, or as a result of, any statement or conduct of any kind by or on behalf of the other parties to this Deed or any of their respective related bodies corporate (as defined in the *Corporations Act 2001* ) except as expressly set out in this Deed .
- (h) **(Documents and agreements)** The Agreement and all documents and agreements which have the effect of varying it are described in this Deed and have been duly executed by the Supplier on or prior to the date of this Deed.

#### **4. General Undertakings**

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##### **4.1 By the Supplier**

The Supplier undertakes to the Agent as follows, except to the extent the Agent otherwise consents.

- (a) **(Further assurances)** It shall whenever requested by an Enforcing Party, promptly do or cause to be done anything which the Enforcing Party considers

necessary or expedient to more fully enable the Enforcing Party to exercise its Powers under the Security or to exercise the Powers or perform the obligations of the Mortgagor under the Agreement, including providing the Enforcing Party with all necessary access to Plantation Areas, roads and (if relevant) the Facility Site.

- (b) **(Assignment)** Before it assigns any of its rights under the Agreement in accordance with clause 32 of the Agreement, it will procure that the approved assignee covenants to be bound by this Deed as if it were the Supplier in a deed reasonably satisfactory to the Agent.
- (c) **(Sub-contractors)** It will use its reasonable endeavours to ensure that the terms of each material sub-contract or supply agreement entered into under or for the purposes of the Agreement include provisions sufficient to enable it to assign, without the need for the consent of the relevant sub-contractor or supplier, its interest in and Powers under those sub-contracts or agreements to the Mortgagor or any Enforcing Party if the Agreement is, or has become capable of being, terminated or rescinded as against the Supplier in accordance with its terms.
- (d) **(Assignment of sub-contracts)** It will assign its interest in and Powers under any sub-contract or supply agreement to the Mortgagor or any Enforcing Party on request by the Agent if the Agreement is, or has become capable of being, terminated or rescinded as against the Supplier in accordance with its terms. The Supplier shall complete, enter into and execute any document and give any notice which the Agent may reasonably request in order to give effect to, complete or perfect that assignment.

#### **4.2 By the Mortgagor**

Despite any provision of the Agreement, the Mortgagor undertakes to the Agent that it will not terminate the Agreement unless it has given not less than 5 days notice to the Agent setting out the reasons for its proposal to terminate the Agreement and the Agent has provided its consent to that proposal.

## **5. Default**

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### **5.1 Notification by the Supplier**

- (a) The Supplier shall notify the Agent of any Default or Force Majeure Event as soon as it becomes aware of the same.
- (b) The Supplier shall promptly give the Agent copies of all documents issued by the Supplier to the Mortgagor under the Agreement in any way relating to, or arising out of, any matter described in paragraph (a).

### **5.2 Cure rights**

- (a) Subject to the Security, on becoming aware of any Default, an Enforcing Party may take steps to remedy, or procure the remedy of, that Default.
- (b) To the extent reasonably requested by an Enforcing Party for the purpose of exercising its Powers under this Deed, the Supplier shall promptly provide that Enforcing Party with reasonable information in its possession relating to the relevant Default (including details of any steps which the Supplier considers appropriate to be taken to remedy the Default).

### **5.3 Enforcement by the Supplier**

The Supplier may not exercise any right of the Supplier under the Agreement to terminate the Agreement for a Default by the Mortgagor unless:

- (a) the Supplier has given to the Agent a copy of the notice given to the Mortgagor in respect of the relevant Default; and
- (b) within 30 calendar days of the date on which the notice referred to in paragraph (a) is given, either:
  - (i) the Agent notifies the Supplier that an Enforcing Party intends to remedy the Default (if capable of remedy), or enter into possession of the Mortgagor's rights under the Agreement (if the default is not

capable of remedy, and which, for the purposes of this Deed and the Agreement will be deemed to cure any insolvency of the Mortgagor), and

- (A) if the Default is a breach of the Agreement which is capable of remedy, that Default has not been remedied within 60 days or any longer period agreed by the Supplier (that agreement not to be unreasonably withheld as long as the remedy is being diligently pursued by an Enforcing Party) of the date on which the Agent so notifies the Supplier under this paragraph (b); or
  - (B) if the Default is not a breach of the Agreement which is capable of remedy, an Enforcing Party does not enter into possession of the Mortgagor's rights under the Agreement and commence and continue to perform its obligations under the Agreement within 60 days of the date on which the Agent so notifies the Supplier under this paragraph (b); or
  - (C) an Enforcing Party does not commence to diligently pursue a remedy of the Default (if capable of remedy); or
- (ii) the Agent notifies the Supplier that it elects not to take any steps to remedy the Default.

#### **5.4 Confirmation**

For the avoidance of doubt, if the Security Trustee enforces the Security or appoints an Enforcing Party:

- (a) the Agreement remains in full force and effect, but subject to its terms, subject to this Deed; and
- (b) the Security Trustee or Enforcing Party (respectively) is not liable to the Supplier in respect of any events, acts or omissions which have occurred or should have occurred before the date of the enforcement or appointment, or

for any liability of the Mortgagor in relation to the Agreement in respect of any event, act or omission before the date of the enforcement or appointment.

## **6. Further Security**

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Any further security or assurance from the Mortgagor or under the Security in favour of an Enforcing Party will be taken to be part of the Security and governed by this Deed.

## **7. Severability of Provisions**

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Any provision of this Deed which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

## **8. Notices**

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All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Deed:

- (a) must be in writing signed by an authorised officer of the sender; and
- (b) will be taken to be given or made when delivered, received or left at the following address or following fax number of the recipient shown in this Deed or to any other address or fax number which it may have notified the sender but, if delivery or receipt is on a day on which business is not generally carried on in the place to which the communication is sent or is later than 4pm, it will be taken to have been given or made at the commencement of business on the next day on which business is generally carried on in that place:

**If to the Supplier:**

Address: [                      ]

Attention: [                      ]

Fax No: [                      ]

**If to the Mortgagor:**

Address: [ ]

[ ]

Attention: [ ]

Fax No: [ ]

**If to the Agent:**

[Insert]

**If to the Security Trustee:**

[Insert]

**9. Entire Agreement**

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This Deed contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter. Without limitation, the Security Trustee is not obliged to do anything except as expressly set out in this Deed.

**10. Amendment**

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This Deed may be amended only by another deed executed by all parties.

**11. No Waiver**

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- (a) No failure to exercise and no delay in exercising any right, power or remedy under this Deed will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- (b) A party shall not be taken to have waived any of its rights under this Deed unless such a waiver is contained in a written notice given to the other parties. Any such waiver shall only operate to the extent specified in the written notice.



## **12. Assignment by Security Trustee and Agent**

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### **12.1 By the Security Trustee**

- (a) The Security Trustee may assign its rights and obligations under this Deed at any time, subject to the Security.
- (b) If the Security Trustee is replaced as trustee of the Security Trust:
  - (i) it will no longer have any rights under this Deed; and
  - (ii) it will be released from its obligations under this Deed,when the replacement security trustee provides the other parties with copies of a deed poll under which it undertakes to be bound by this Deed as Security Trustee.
- (c) In exercise of its Powers under the Security, an Enforcing Party may assign the rights and interest of the Mortgagor in, to and under the Agreement and any related sub-contracts to any solvent and respectable person which is acquiring all or substantially all the Mortgagor's rights in relation to the Plant the subject of the Agreement where it agrees to be bound by the Agreement in place of the Mortgagor to the reasonable satisfaction of the Supplier.

### **12.2 By the Agent**

- (a) The Agent may assign its rights and obligations under this Deed at any time, subject to the Facilities Agreement.
- (b) If the Agent is replaced as agent for the Participants under the Facilities Agreement:
  - (i) it will no longer have any rights under this Deed; and
  - (ii) it will be released from its obligations under this Deed,

when the replacement agent provides the other parties with copies of a deed poll under which it undertakes to be bound by this Deed as Agent.

### **13. Assignment by the Mortgagor**

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- (a) The Mortgagor may not assign, charge, encumber or otherwise deal with any of its rights and obligations under this Deed without the prior written consent of the other parties.
- (b) The Supplier may not assign, charge, encumber or otherwise deal with any of its rights or obligations under this Deed without the prior written consent of the other parties, such consent not to be unreasonably delayed or withheld.

### **14. Governing Law and Jurisdiction**

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This Deed is governed by the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there and waive any right to claim that those courts are an inconvenient forum.

### **15. Counterparts**

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This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

### **16. Stamp Duty**

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The Mortgagor shall bear any stamp duty (including fines and penalties) chargeable on this Deed and on any instruments executed under this Deed. The Mortgagor shall indemnify each other party on demand against any liability for that stamp duty.

**Executed** and delivered as a deed.

Each attorney executing this Deed states that he has no notice of revocation or suspension of his power of attorney.

**SUPPLIER**

**Executed** for and on behalf of **Forest Products Commission** by the **General Manager of the Forest Products Commission** as delegate of the Forest Products Commission under section 13 of the Forest Products Act 2000 (WA):

\_\_\_\_\_  
Signature

\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_

**MORTGAGOR**

**Executed** for and on behalf of **WESTERN AUSTRALIA BIOMASS PTY LTD** (in accordance with s127 of the Corporations Act) by:

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_

**AGENT**

**Signed Sealed and Delivered for**  
**[insert]** by its attorneys in the presence  
of:

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Attorney Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Attorney Signature

\_\_\_\_\_  
Print Name

**SECURITY TRUSTEE**  
**Signed Sealed and Delivered for**  
**[insert]** by its attorneys in the presence  
of:

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

\_\_\_\_\_  
Print Name

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

\_\_\_\_\_  
Print Name


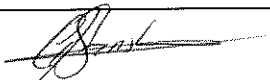
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Attorney Signature

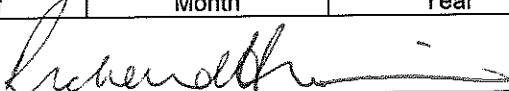

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Attorney Signature

\_\_\_\_\_  
Print Name

**Execution pages**

Execution – Forest Products Commission			
SIGNED by David John Hartley the <b>General Manager of the Forest Products Commission</b> as delegate of the Forest Products Commission under section 13 of the Forest Products Act 2000 (WA)			
Dated	20	MAY	2014
	Day of	Month	Year
Signature			
In the presence of:			
Signature of Witness			
Name of Witness (Print)	CHRIS STANSBURY		
Witness Address	C/- Forest Products Commission Level 1, D Block, 3 Baron-Hay Court, Kensington WA 6151		
Witness Occupation	Public Servant		

Execution – Buyer			
Executed for and on behalf of Western Australia Biomass Pty Ltd (ABN 87 122 951 660) in accordance with section 127 of the Corporations Act 2001(Cth)			
Dated	12 <sup>th</sup>	MAY	2014
	Day of	Month	Year
Signature of Director			
Name of Director (Print)	RICHARD HARRIS		
Signature of Director/Secretary			
Name of Director/Secretary (Print)	KYLE JACKSON		