

THIS AGREEMENT is made the FIFTH day of MARCH 1999.

1. PARTIES

1.1 THE FORESTRY COMMISSION OF NSW, a corporation constituted under the Forestry Act, 1916 (NSW) trading as **STATE FORESTS** ("State Forests")

1.2 HARRIS-DAISHOWA (AUSTRALIA) PTY. LTD., (ACN 000 604 795) ("Company")

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

2. RECITALS

2.1 The Company is carrying out in the State of NSW chipping and other processing of timber.

2.2 The Company desires that sufficient timber will be available to enable it to carry on the business of chipping and other processing in an efficient and economic manner.

2.3 State Forests has timber resources located within Crown-timber lands within the Eden Management Area, and is willing to make these available in agreed quantities for the said business of the Company.

2.4 The Company and State Forests entered into an agreement on 22 February 1989 (the Earlier Agreement) under which State Forests agreed to supply pulpwood timber to the Company for 20 years from 1 January 1990 from the Eden, Badja, Narooma, Batemans Bay, and Queanbeyan Management Areas.

2.5 In accordance with the Government's forestry reform policy, since 1996 the Eden Management Area (the Area of Supply) has been subject to a

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Comprehensive Regional Assessment (CRA) conducted by or on behalf of the Resource and Conservation Assessment Council established by the Government.

- 2.6 In October 1998, following the completion of the CRA process in Eden, the Government announced a decision regarding the restructuring of forestry management in Eden Management Area. As a result of the Government's decision the parties agree it is appropriate to replace the Earlier Agreement in relation to the supply of pulpwood timber from the Eden Management Area.
- 2.7 The parties hereto desire to enter into this Agreement to give effect to a fresh agreement for the supply of pulpwood timber from the Eden Management Area and to amend the Earlier Agreement to exclude its application to the Eden Management Area.

3 DEFINITIONS AND INTERPRETATION

- 3.1 In this Agreement unless inconsistent with the context or subject matter -

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

"an Annual Supply" means either the Integrated Supply or the Thinning Supply, as the case may be;

"Annual Delivery Plan" means a schedule for the Year to which it applies setting out indicative information regarding the supply of the Annual Quantity particularly the areas from which it is intended the Timber be harvested and the monthly volumes of delivery of Timber to the Delivery Site;

"Annual Quantity" means the quantity of Timber to be made available to the Company in a Year by State Forests carrying out Contract Harvesting. The Annual Quantity for a Year may not exceed the quantity of Timber

the Company advises State Forests (in accordance with **Clause 17.1**) it proposes to take in that Year;

"Area of Supply" means the Eden Management Area;

"BDMT" means Bone Dry Metric Tonne.

"Business" means the manufacture by the Company of woodchips from pulpwood timber and the disposal of residues from such operations;

"Business Days" means the days Monday to Friday inclusive but excluding Public Holidays and rostered days off;

"Chipmill" means the plant at Jews head, Eden, NSW covered by Sawmill Licence No. 9656 (or further licences in place of same);

"Commencement Date" means the date nominated by State Forests by notice in writing to the Company under **Clause 13.2** as the commencement date for Contract Harvesting;

"Compartment" means an identified administrative area from which State Forests will make a supply of Timber available to the Company in accordance with a Harvesting Plan;

"Contract Harvesting" means the felling, extraction, sorting, processing, grading, loading, hauling, and delivery of Timber comprising the Total Annual Supply and ancillary works including roading, tracking, log dump construction and site rehabilitation by a Contractor engaged by State Forests;

"Contractor" includes servants and agents of that contractor;

"Delivered Cost" means either:

- (a) in the case of timber being made available by State Forest issuing licenses under the Act to the Company the total of the

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Prices payable on the timber taken and the Company's costs and expenses of harvesting and hauling the timber to its mill at Eden;
or

- (b) in the case of timber being made available by State Forests carrying out Contract Harvesting the total of the Prices payable on the timber and State Forests' costs and expenses of undertaking Contract Harvesting involved.

"Delivery Site" means the Chipmill;

"Earlier Agreement" means the agreement between the Company and State Forests dated 22 February 1989 under which State Forests agreed to supply pulpwood timber to the Company for 20 years from 1 January 1990 from the Eden, Badja, Narooma, Batemans Bay, and Queanbeyan Management Areas.

"Eden Management Area" means the area identified as the Eden Management Area on the map annexed as **Schedule 1**;

"Force Majeure" means an event (other than the payment of money) arising from an act of God, industrial dispute, act or omission of government or government department or instrumentality, war, sabotage, riot, civil disobedience, epidemic, disease, fire, explosion, failure of power supply, accident, natural disaster, calamity or unlawful act by other person, or any similar cause which prevents a party from performing its obligations (in whole or in part) under this Agreement;

"Hardwood" and **"Hardwood Timber"** means timber of the genera Eucalyptus and Corymbia, and Acacia dealbata;

"Hardwood Chips" means wood chips derived from hardwood timber;

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

"Harvesting Plan" means a detailed plan for logging of a Compartment or other harvesting unit. It shows roading access and loading areas and comprises a written schedule and map;

"Integrated Supply" means the quantity of Timber which (in accordance with **Clause 8**) each Year is to be made available to the Company by State Forests from Integrated Operations (other than Thinning Operations), being a quantity of Timber which is not greater than 281,720 tonnes;

"Integrated Operation" and **"Integrated Harvesting"** means a harvesting operation in which two or more types of Timber are harvested and sorted into discrete categories;

"Log Dump" means a place nominated by State Forests, where timber is stored and serviced, prior to delivery to a sawmill or processing plant;

"Management Area" means the area of land described as such in a management plan approved by State Forests;

"Management Plan" means a management plan prepared pursuant to Clause 6 of the Forestry Regulation, 1994;

"Minister" means the Minister for Forestry in New South Wales or any other Minister who may be appointed as ministerial head of State Forests;

"Monthly Delivery Schedule" means a schedule stating the volume of Timber to be delivered to the Delivery Site in the course of State Forests undertaking Contract Harvesting and the areas from which the Timber will be harvested, during the month to which it applies together with any special delivery requirements the Company may have for that month. The volume and area will be based on, but not bound to, the indicative information in the Annual Delivery Plan for that month, and should take into account the need for the Company to stockpile Timber to make provision for weather preventing Contract Harvesting.

"Overcut" means the amount by which the quantity of the Timber taken by the Company in any Year is greater than the Specified Proportion (as defined by **Clause 10.1**) of the Total Annual Supply;

"Plan of Operations" means a plan prepared by State Forests indicating the proposed quantity of the Total Annual Supply to which the Plan applies, the Compartments from which it is proposed the Total Annual Supply be harvested and the order of working those Compartments;

"Price" means royalty payable under the Act for Timber taken by the Company under licence issued under the Act (calculated in accordance with **Clause 20**) provided that where the Timber is delivered to the Company in the course of State Forests undertaking Contract Harvesting Price means royalty calculated in accordance with **Clause 20** increased by the costs to State Forests of undertaking Contract Harvesting in relation to the Timber (calculated by reference to the Schedule of Contract Harvesting Rates);

"Residues" means bark, sidings, offcuts, chips, sawdust, shavings and other residues produced as a consequence of the conversion of logs into sawn or milled timber, and the conversion of pulpwood timber into woodchips;

"Salvage" means the taking of windthrown timber or damaged timber, pushed over or felled for purposes other than timber harvesting, including road construction, powerline construction and extraction of forest materials;

"Schedule of Contract Harvesting Rates" means a schedule of the costs to State Forests of undertaking Contract Harvesting;

"Specifications " means the Specifications for timber annexed as **Schedule 2**;

"Thinning Operations" means the routine scheduled thinning of stands for the purpose of enhancing sawlog production in the stands;

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"Thinning Supply" means the quantity of Timber which (in accordance with **Clause 8**) each Year is to be made available to the Company by State Forests from Thinning Operations, being a quantity of Timber which is not less than 47,680 tonnes;

"Timber " is that hardwood timber which meets the Specifications;

"Tonne" means one tonne of debarked logs as determined on an accredited weighbridge.

"Total Annual Supply" means 329,400 tonnes of Timber which State Forests is to make available to the Company in each Year. The Total Annual Supply is comprised of the Integrated Supply and the Thinning Supply;

"Undercut" means the amount by which the quantity of the Timber taken by the Company in any Year is less than the Specified Proportion (as defined by **Clause 10.1**) of the Total Annual Supply;

"Year" means a period of twelve months commencing the first day of January and ending the thirty first day of December;

3.2 In this Agreement unless the context requires otherwise;

3.2.1 a reference to the Act includes all amendments, regulations, rules, by-laws and proclamations under the Act;

3.2.2 words and phrases defined in the Act will have the same meanings attributed to those words and phrases in the Act unless the word or phrase is defined in this Agreement in which case the word or phrase will have the meaning attributed to it in this Agreement;

- 3.2.3 headings are for convenience only and do not affect the interpretation of this Agreement;
- 3.2.4 words importing the singular include the plural and vice versa;
- 3.2.5 words importing a gender include any gender;
- 3.2.6 a reference to a person includes a company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;
- 3.2.7 a reference to any thing includes a part of that thing;
- 3.2.8 a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of and a party, annexure, exhibit or schedule to this Agreement;
- 3.2.9 a reference to a document includes all amendments or supplements or replacements or novations of that document;
- 3.2.10 a reference to a party to a document includes that party's successors and permitted assigns;
- 3.2.11 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it;
- 3.2.12 a reference to dollars or \$ is a reference to the lawful currency of the Commonwealth of Australia.
- 3.2.13 a reference to the Minister is a reference to the Minister acting in his capacity as representative of the Crown in the right of the State of New South Wales but not as a statutory officer under the Act.

3.2.14 a reference to State Forests making Timber available is a reference to making Timber available by either of the methods described in **Clause 12.1**.

3.2.15 a reference to the Company taking Timber is a reference to the Company either taking Timber from Crown-timber land under licence or accepting delivery of Timber delivered by State Forest to the Company in the course of State Forests conducting Contract Harvesting.

3.2.16 a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);

4. SCOPE OF AGREEMENT

4. State Forests shall sell and the Company shall purchase and process the timber referred to in **Clause 8** at the prices provided for in **Clause 20** upon the terms and conditions set forth in this Agreement.

5. DURATION OF AGREEMENT

5.1 This Agreement shall commence on and shall remain in force for a term of 20 years from the first day of January 1999.

5.2 State Forests may at the request of the Company by notice in writing to State Forests negotiate with the Company for the purpose of entering into a further Agreement. In any such negotiation, the parties shall recognise the principles referred to in **Clause 6** hereof.

5.3 A request to negotiate may be made by the Company not earlier than seven (7) years before and not later than one (1) year before the end of the term of this Agreement.

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- 5.4 In the event of a request being made in pursuance of **Clause 5.2** State Forests shall within three months from the date of the request notify the Company whether it will agree to negotiate with the Company for the purpose of entering into a further Agreement.

6. RECOGNITION THAT BUSINESS IS COMPETITIVE

- 6.1. In using its powers and applying its discretions, whether under this Agreement or the Act, State Forests shall give full recognition to the fact that the Company is engaged in a competitive business and, so far as the interests of forest management allow State Forests, (which shall for the purposes of this Agreement be the sole judge of what is proper forest management) shall so act in every reasonable way as to enable the Company to carry on its business in an economic manner. However, to resolve doubt nothing in this Clause shall fetter State Forests in the proper exercise of its statutory powers, functions and duties under the Act and any other applicable statute.
- 6.2 For its part, the Company shall give full recognition to the fact that State Forests has obligations and responsibilities to manage the forests in a professional, efficient and economic way and therefore shall act in a reasonable manner so as not to prevent State Forests from fulfilling such obligations and responsibilities.

7. OBLIGATION OF THE STATE

7. The State of New South Wales undertakes to ensure that State Forests has sufficient Timber and other resources and the necessary capacity to make available to the Company from the Area of Supply the Total Annual Supply of Timber in accordance with this Agreement, and undertakes to cause State Forests to perform its obligations under this Agreement. The State of NSW will only be excused for any failure to perform its undertakings set out in this **Clause 7** if prevented from doing so by Force Majeure. For the purposes of this **Clause 7** the words 'act or omission of

government or government department or instrumentality' in the context of Force Majeure will be deemed to mean 'act or omission of a government or government department or instrumentality other than the government or a department or instrumentality of the State of NSW'

8. QUANTITIES

- 8.1 Each Year of this Agreement State Forests must make the Total Annual Supply available to the Company from the Area of Supply, of which not less than 47,680 tonnes shall comprise the Thinning Supply.
- 8.2 State Forests will specify in its Plan of Operations for a Year the quantity of each of the Integrated and Thinning Supplies it proposes to make available in that Year. At the same time State Forests will provide the Company with indicative information regarding each of the Annual Supplies for the Year following the Year to which the Plan of Operations relates.
- 8.3 If in any year the Company fails to take the Total Annual Supply, State Forests may make available to the Company in the subsequent year an amount of Timber in addition to the Total Annual Supply but not exceeding 10 % of the Total Annual Supply.
- 8.4 If the Company proposes to take any additional Timber referred to in **Clause 8.3** it shall give notice to State Forests of that intention and such notice shall be given as soon as practicable after the intention is formed.
- 8.5 Nothing in this **Clause 8** shall prevent State Forests making available to the Company in any Year a quantity of Timber additional to the Total Annual Supply.
- 8.6 For the purposes of its compliance with **Clause 8.1** if in any Year State Forests makes Timber available by Contract Harvesting, it will be deemed to have made available by Contract Harvesting that quantity which it is ready willing and able to make available in that Year by Contract

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Harvesting and not any lesser quantity which it may actually make available in compliance with the Company's advice under **Clause 17.1**.

9. RIGHT TO SUPPLY FROM OUTSIDE THE AREA OF SUPPLY

9. State Forests may make an Annual Supply, or any part thereof, available from any area ("the substituted area") outside the Area of Supply provided always that State Forests must ensure that the Delivered Cost from the substituted area does not exceed the average Delivered Cost which would be payable if the timber made available was made available from within the Area of Supply.

10. PAYMENT FOR UNDERCUT

10.1 For the purpose of this **Clause 10** and **Clause 11**, the "**Specified Proportion**" of the Total Annual Supply is 83%.

10.2 The Company shall be bound in each Year in which the Total Annual Supply is made available to it either -

10.2.1 to take not less than the Specified Proportion of the Total Annual Supply; or

10.2.2 if it takes less than the Specified Proportion of the Total Annual Supply, to pay an amount of money to State Forests equal to the Prices which would have been payable had the Company obtained the Specified Proportion less the Prices payable for the Timber taken by the Company in that Year provided:

(a) such payment to be made within 90 days after the end of the Year;

(b) calculations of the Prices paid for Timber taken or payable on the Specified Proportion shall assume the Timber was

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made available to the Company by licence issued under the Act;

- (c) in calculating the amount which would have been payable on the Specified Proportion it shall be assumed that the amount is 83% of amount payable on the Total Annual Supply assuming the Thinning Supply was as specified in the Plan of Operations for that Year.

10.3 If the Company, during the Year next following a Year in which there is an Undercut, obtains an Overcut, then the Prices payable on the Overcut shall be reduced by the amount of money paid in the previous Year in respect of the Undercut provided that the reduction shall not exceed the total amount of the Prices (calculated on the assumption the Timber was made available to the Company by licence issued under the Act) payable on the Overcut.

11. OTHER EFFECTS OF UNDERCUT

11.1 Where the Company at its option takes less than the Specified Proportion of the Total Annual Supply in each of any two consecutive Years, State Forests may after consultation with the Company amend the Total Annual Supply by reducing it by the average of the Undercut during those two years. State Forests may give effect to the reduction of the Total Annual Supply by amending the minimum quantity it is to make available as the Thinning Supply by the average of the Undercut during those two years.

11.2 If the Company:

11.2.1 takes less than the Specified Proportion of the Total Annual Supply for two consecutive years on more than one occasion; or

11.2.2 takes less than 50% of the Total Annual Supply in any one year;

then State Forests shall be entitled to determine the Agreement upon notice given in accordance with **Clause 32**.

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11.3 Notwithstanding any other provision of this **Clause 11**:

11.3.1 if timber is made available to the Company by Contract Harvesting, the Company must take all the timber delivered to it in accordance with the Monthly Delivery Schedules.

11.3.2 unless agreed between the Company and State Forests, if in any Year the Company is unable to take the whole Total Annual Supply it must use its best endeavours to take timber from the Thinning Operations and Integrated Operations (other than Thinning Operations) respectively in the ratio of the quantities proposed to arise from those two Operations respectively as specified in the Plan of Operations for that Year.

11.4 Subject to binding commitments of the Company in force on 1st January 1999, the Company must use its best endeavours to ensure that Timber made available under this Agreement (other than Timber referred to in **Clause 8.5**) is its first priority as its source of supply.

12. METHOD OF SUPPLY

12.1 State Forests will issue licences under the Act enabling the Company to take Timber or may elect to make Timber available by conducting Contract Harvesting operations.

12.2 The provisions of **Clauses 12.4, 17 and 18** shall only apply in relation to Timber made available to the Company by State Forests issuing licences to the Company.

12.3 The provisions of **Clauses 13, 14, 15, 16 and 21** shall only apply in relation to Timber made available to the Company by State Forests conducting Contract Harvesting.

12.4 The Company may obtain Timber from:

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12.4.1 standing live trees or other material as agreed between the Company and State Forests; or

12.4.2 parts of trees in an integrated operation; or

12.4.3 thinning of small diameter hardwood regrowth; or

12.4.4 Salvage.

12.5 Where Timber is made available by State Forests issuing licences to the Company all areas harvested to obtain the Timber must be logged to the satisfaction of State Forests.

12.6 State Forests will be responsible for reject tree felling costs in accordance with established protocols.

13. CONTRACT HARVESTING

13.1 At any time during the term of this Agreement after 1 January 2002 State Forests may elect to make any or all of the Total Annual Supply available to the Company by Contract Harvesting.

13.2 If State Forests intends to undertake Contract Harvesting it must, as soon as practicable after it forms the intention, give the Company written notice of its intention, the details of the extent of the prospective operations and the Commencement Date which in any event must be at least 2 years from the date of the notice.

13.3 After the execution of this Agreement the Company must not without first obtaining the written consent of State Forests, engage the services of a Contractor to harvest or haul Timber to be made available under this Agreement, on terms which require 24 months or more notice to terminate the services. State Forests may not unreasonably withhold consent if the proposed contract will not prejudice State Forests' engagement of

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contractors to carry out Contract Harvesting to make the Total Annual Supply available.

- 13.4 If prior to the execution of this Agreement the Company has engaged a Contractor for the harvesting or haulage of Timber and the engagement will extend into the term of this Agreement and require 24 months or more notice to terminate the engagement, the Company must, at State Forests' written request, seek the Contractor's consent and use its best endeavours to effect an assignment of the Contract to State Forests or novation of the Contract to substitute State Forests for the Company.
- 13.5 As soon as practicable after the execution of this Agreement the Company must provide State Forests with the following details of any current harvesting or haulage contract which will be relevant to the harvesting or haulage of Timber under this Agreement and requires 24 months or more notice to terminate:
- 13.5.1 The Contractor's name;
 - 13.5.2 The commencement date of the contract;
 - 13.5.3 The geographical area covered by the contract;
 - 13.5.4 The volume of Timber covered by the contract;
 - 13.5.5 The termination date;
 - 13.5.6 The period of notice required to terminate the contract.
- 13.6 Any decision by State Forests to undertake Contract Harvesting will be subject to the policies and directions of the State of NSW. State Forests will provide the Company with an explanation of the reasons for undertaking Contract Harvesting and will provide the Company with an opportunity for comment and consultation and will take into account any comments of the Company before commencement of Contract Harvesting operations.
- 13.7 State Forests may after consultation with the Company vary any Plan of Operations to allow it to undertake Contract Harvesting operations and must where necessary or appropriate to do so submit any varied Plan of

Operations to the Harvesting Approval Process for approval or endorsement.

- 13.8 Prior to commencing Contract Harvesting State Forests must provide a copy of any Plan of Operations as varied to the Company and State Forests may commence the Contract Harvesting operations at any date after the expiration of the period of notice given to the Company under **Clause 13.2.**

14. ANNUAL DELIVERY PLAN AND MONTHLY DELIVERY SCHEDULES

- 14.1 State Forests and the Company must not less than 6 months prior to the Commencement Date confer and negotiate in good faith to reach agreement on Annual Delivery Plan for the remainder of the Year of the Commencement Date. In default of agreement by 21 days prior to the Commencement Date the Annual Delivery Plan will be determined by State Forests.
- 14.2 No later than 30 November in each Year of this Agreement State Forests and the Company must confer in good faith and reach agreement on an Annual Delivery Plan for the Annual Quantity for the following Year. The Annual Delivery Plan must make provision for stockpiling by the Company to make provision for not less than 5 consecutive Business Days of wet weather preventing Contract Harvesting. In default of agreement by that date the Annual Delivery Plan will be determined by State Forests.
- 14.3 No later than 7 days prior to the commencement of each calendar month State Forests and the Company must confer in good faith and reach agreement on a Monthly Delivery Schedule for that month. In default of agreement the Monthly Delivery Schedule for that month will be determined by State Forests.
- 14.4 If the Company has any special requirements regarding delivery of Timber in any particular week not already provided for in a Monthly

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Delivery Schedule, it may request State Forests to comply with the special requirements by giving not less than one weeks notice in writing.

- 14.5 Having due regard to the practicalities State Forests will use reasonable endeavours to comply with any request under **Clause 14.4**.
- 14.6 State Forests must use its best endeavours to ensure that the Annual Quantity for each Year is delivered substantially in accordance with the Monthly Delivery Schedules for that Year and otherwise at regular intervals and in regular volumes.
- 14.7 Agreement by State Forests to an Annual Quantity, Annual Delivery Plan or Monthly Delivery Schedule or amendment thereto which provides for less than a Specified Proportion of an Allocation referred to in **Clause 10** being taken by the Company in any Year will not constitute a waiver of any obligation imposed or right given by this Agreement.

15. AMENDMENT OF ANNUAL DELIVERY PLAN OR MONTHLY DELIVERY SCHEDULES

- 15. Where any timber in a Compartment has been damaged or destroyed by fire, disease or other natural cause or access to a Compartment intended to supply the Annual Quantity is otherwise prevented by Force Majeure, State Forests may, after consultation with the Company, amend any Annual Delivery Plan or Monthly Delivery Schedule as it deems necessary to facilitate Salvage operations or to adjust to the unavailability of timber in Compartments.

16. ACCEPTANCE OF DELIVERY

- 16.1 The Company must accept Timber delivered by State Forests:

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16.1.1 to the Delivery Site substantially in accordance with the Monthly Delivery Schedule; and

16.1.2 during the hours of 7.00 am and 7.30 pm on Business Days.

16.2 The Company must promptly unload timber delivered to it in accordance with this Agreement.

16.3 The Company must ensure that all unloading operations at the Delivery Site are performed in a safe manner in accordance with the NSW WorkCover's Code of Practice for the Safe Loading and Unloading of Logs (1995).

17. PLAN OF OPERATIONS

17.1 Not later than 30 November in each Year during the term of this Agreement State Forests after consultation with the Company, shall draw up and deliver to the Company a draft Plan of Operations for the supply of the Total Annual Supply for the following Year. Such Plans will be in accordance with proper forest management and must be lodged for approval in accordance with any Harvesting Approval Process. In the course of such consultation the Company must advise State Forests in writing of the quantity of Timber it proposes to take during the following Year.

17.2 State Forests will provide the Company with a copy of the Plan of Operations when approved and any Plan of Operations as may be modified from time to time.

17.3 The Company and State Forests must use all reasonable endeavours to implement each Plan or modified Plan of Operations.

17.4 The Company recognises that the Plan of Operations may schedule Integrated Operations.

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- 17.5 From time to time during the term of this Agreement the Company may request State Forests by notice in writing to consider any modification or change to a Plan of Operations which the Company believes is necessary to enable or facilitate the taking of any timber. If State Forests is satisfied that the requested modification or changes are necessary it may amend or vary the Plan of Operations and seek approval through the Harvesting Approval Process
- 17.6 Where any timber in the Area of Supply has been damaged or destroyed by fire, disease or other natural cause State Forests must review any Plan of Operations to evaluate whether it is possible to harvest timber from the damaged forest by way of Salvage operations or whether any Compartments are able to be made available.
- 17.7 If State Forests considers a variation of a Plan of Operations is necessary, State Forests will consult with the Company and take into account its views and may modify or vary the Plan of Operations and where necessary seek approval through the Harvesting Approval Process for a variation of the Plan of Operations.

18. HARVESTING PLANS

18. Harvesting plans will be prepared by State Forests for areas specified in the Plan of Operations.

19. SPECIFICATIONS

- 19.1 The Company is not bound to take timber which does not conform to the Specifications.
- 19.2 Under Integrated Operations conducted by the Company, sawlog timber shall be removed to a log dump as directed by State Forests and other timber not suitable for sawmilling and not meeting the Specifications shall,

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as far as is practicable, be left at the stump unless otherwise directed by State Forests.

20. PRICES

20.1 At the commencement of this Agreement and subject to retrospective variation in accordance with this **Clause 20.2** the Prices shall be;

20.1.1 Integrated Supply \$20.45/tonne

20.1.2 Thinnings Supply \$ 10.23/tonne

20.2 Prices of Timber may be varied from 1st January and 1st July of each Year (including 1999). The Price variation may be initiated by either party requesting a Price review by written notice to the other party not less than one month prior to the date the proposed price variation is to commence. The outcome of the Price review shall be applied retrospectively if the review is not concluded by the said commencement date.

20.3 Subject to **Clauses 20.4 & 20.5** Price variations will be made in accordance with the result of a Price review conducted jointly by the parties acting in good faith taking into account the following factors:

20.3.1 Variations from one Price review to another in the weighted average FOB hardwood chip prices (\$A/BDMT) for the Company at Eden for sales to Daishowa Paper Manufacturing Co.Ltd.;

20.3.2 Variations from one Price review to another in FOB hardwood chip prices (\$A/BDMT) for Australian exporting companies, other than the Company, and for the Company in relation to sales other than to Daishowa Paper Manufacturing Co. Ltd.;

20.3.3 Prices being paid or agreed to be paid and movements therein, for logs comparable to those comprising the Total Annual Supply, from public forests throughout Australia;

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20.3.4 The quantity of hardwood chips and changes therein exported by Australian Companies including the Company;

20.3.5 Changes to costs of harvesting, processing and transport of the Total Annual Supply, and end-products derived from it, and which are being experienced generally by the hardwood woodchips export industry, and which affects the residual value of the Timber comprising the Total Annual Supply;

20.3.6 Changes in the costs of forest management incurred by State Forests in making the Total Annual Supply available;

20.3.7 Variations in the level of use of Edrom Road by the Company for haulage of Timber taken from Crown-timber lands as a proportion of the Company's use of that road for haulage of timber obtained by it from all sources;

20.3.8 Any other relevant commercial or market factor which in the reasonable opinion of the Company or State Forests, affects the value of Timber comprising the Total Annual Supply.

20.4 Where in a Price review;

20.4.1 the parties agree that the factors set out in **Clause 20.3** [other than **Clause 20.3.1**] should not be used, or

20.4.2 the parties cannot agree on the weight to be attached to those factors,

then the new Prices will be those Prices that bear to the current Prices the same proportion as the new FOB prices bear to the old FOB prices where:

- **"the current Prices "** means the Price payable at the time of the request for the Price review then being conducted.

- **"the new FOB prices "** means the weighted average referred to in **Clause 20.3.1** being paid at the completion of the price review then being conducted.
- **"the old FOB prices "** means the weighted average of the FOB hardwood chip prices referred to in **Clause 20.3.1** taken into account in setting the current Prices .

20.5 Notwithstanding any other provision of this Agreement, the Price review to vary prices from 1 January in the years 2003, 2007, 2011 and 2015 shall take into account all the factors set out in **Clause 20.3**. If by these dates the parties are unable to reach agreement on the Price variation taking into account all those factors, then the Price variation will be determined by State Forests taking into account all those factors.

20.6 The Company shall promptly provide on a confidential basis, information requested by State Forests, that is relevant to any of the factors in **Clause 20.3** which the parties have agreed to use in the current Price review, unless in the opinion of the Company the release of such information to any person outside of the Company would be damaging to the Company because of the commercial sensitivity of that information except the Company must, during any price review, provide State Forests with written particulars necessary to establish the weighted average of FOB hardwood chip prices (\$/BDMT) for sales to Daishowa Paper Manufacturing Co. Ltd. during the review period .

20.7 Notwithstanding any other provision of this Agreement, where in a Price review the Company fails to provide State Forests with particulars of the FOB hardwood chip prices referred to in **Clause 20.3.1** State Forests may determine the Prices to apply from that Price review (and each Price review thereafter conducted without the Company providing those particulars) without reference to the said FOB hardwood chip prices.

20.8 State Forests, with agreement by the Company, may create new categories of timber for Pricing, based on factors State Forests considers

relevant, including location, quality and size, and may discontinue application of existing timber categories.

- 20.9 An initial Price for new categories of pulpwood shall be determined by State Forests following consultation with the Company. Any determination of the initial Price by State Forests must be consistent with the Price of existing categories of Timber with due regard to quality, and harvesting and haulage costs.

21. PRICES UNDER CONTRACT HARVESTING

- 21.1 If State Forests delivers or causes Timber to be delivered to the Company under a Contract Harvesting operation the Prices payable for the Timber under **Clause 20** will be increased by State Forests' costs of undertaking the Contract Harvesting in relation to the Timber.

- 21.2 State Forests' costs of undertaking the Contract Harvesting are as calculated in accordance with the Schedule of Contract Harvesting Rates to be prepared by State Forests in accordance with this **Clause 21**.

- 21.3 The Schedule of Contract Harvesting Rates must comprise;

21.3.1 a detailed schedule of rates per tonne for the undertaking of Contract Harvesting; and

21.3.2 State Forests' service and management charges.

- 21.4 Not less than 6 months prior to the Commencement Date State Forests and the Company must confer and negotiate in good faith to reach agreement on the Schedule of Contract Harvesting Rates. In default of agreement prior to the Commencement Date State Forests will determine the Schedule of Contract Harvesting Rates.

- 21.5 Any agreement or determination of the Schedule of Contract Harvesting Rates under **Clause 21.4** must take into account the following factors:

21.5.1 the market rates for the various items of work comprising the Contract Harvesting necessary to harvest and haul the Timber involved to the Delivery Site provided:

- (a) those rates are comparable, having regard to the type of Timber produced, the yield per hectare, operation type, physical circumstances of harvesting and haulage;
- (b) the party tabling rates as relevant must verify them to the reasonable satisfaction of the other;

21.5.2 the benefits to the Company which arise because State Forests' conduct of the Contract Harvesting has relieved the Company of liabilities associated with its conduct of harvesting and haulage operations including without limitation liabilities related to Occupational Health and Safety obligations, workers compensation, environmental compliance obligations, and contractual arrangements with harvesting and haulage contractors; and

21.5.3 the liabilities of the Company relating to the provision of reasonable severance pay to Company employees rendered redundant solely by State Forests conduct of Contract Harvesting.

21.6 In each Year during which State Forests conducts Contract Harvesting (except the first Year of Contract Harvesting) and commencing no later than October State Forests and the Company must confer to review the Schedule of Contract Harvesting Rates and must negotiate in good faith to reach agreement on amendments to the Schedule of Contract Harvesting Rates to apply for the following Year. In default of an agreement on the required amendments by one week prior to the commencement of the following Year State Forests may determine which amendments it considers are necessary. State Forests may amend any of the rates specified in the Schedule of Contract Harvesting Rates in

accordance with any agreement or the determination of State Forests as the case may be, and those rates will apply from the first day of the following Year.

21.7 In negotiations to reach agreement or in any determination under **Clause 21.6** State Forests and the Company must take into account:

21.7.1 the factors set out in **Clause 21.5**;

21.7.2 changes in the level of the costs of conducting Contract Harvesting which have occurred during the preceding 12 month period;

21.7.3 efficiency changes in Contract Harvesting operations, which have occurred during the preceding 12 month period as a consequence of legislative, regulatory or technological changes.

21.7.4 the benefits to State Forests or the Company, as the case be, arising because the other party has introduced measures related to the harvesting haulage or delivery of Timber resulting in efficiency gains.

21.8 State Forests must ensure that the Schedule of Contract Harvesting Rates and any amendments to it which State Forests determines under **Clauses 21.4 or 21.6** are fair, reasonable and competitive.

21.9 State Forests must provide the Company with a copy of the Schedule of Contract Harvesting Rates as amended from time to time prior to applying the Schedule.

22. PAYMENT

22.1 Each calendar month State Forests will issue an invoice to the Company for Timber taken by it in the previous calendar month.

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22.2 The Company must pay any monthly invoice by the 25th day of the month of its issue.

22.3 If any amount of Prices payable by the Company is not paid within the time specified by **Clause 22.2**, State Forests may, without limiting the obligations of the Company under **Clauses 10 & 11** of this Agreement, after giving to the Company seven (7) days notice in writing of its intention to do so, suspend the Company's rights to Timber under this Agreement until payment has been made.

23. DETERMINATION OF QUANTITIES

23.1 The quantity of the Total Annual Supply received by the Company and the quantity of Timber upon which Prices are payable under this Agreement shall be determined by the weight of debarked logs recorded at the weighbridge located at point of entry to the main chipping plant. Weighbridge dockets which form the basis for accounts shall be forwarded to State Forests within seven (7) days after the end of each month.

23.2 For the purpose of measuring by weight:

23.2.1 the Company shall provide at its plant a weighbridge acceptable to State Forests and shall, during the currency of this Agreement, have the weighbridge maintained and periodically calibrated in accordance with the Trade Measures Act 1989 (NSW);

23.2.2 at all times while the weighbridge is in accurate working order the quantity of timber upon which Prices are payable under this Agreement shall be determined by weighing it on the weighbridge; and

23.2.3 at all times while the weighbridge is not in accurate working order the quantity of Timber upon which Prices are payable under this Agreement shall be determined in such manner as may be

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agreed upon by State Forests and the Company or failing agreement within fourteen (14) days, as State Forests may direct.

23.3 State Forests reserves the right to undertake independent verification of the operation and accuracy of the weighbridge or other measuring device.

24. DOMESTIC PROCESSOR

24.1 If requested by State Forests by not less than 3 years notice in writing, the Company must offer to sell any hardwood chips it produces from timber obtained under this Agreement, to any domestic processor seeking to purchase the hardwood chips provided;

24.1.1 State Forests' request must specify the domestic processor seeking to purchase the hardwood chips;

24.1.2 the hardwood chips must be hardwood chips the Company would otherwise export; and

24.1.3 the hardwood chips must be offered at a price (ex the chips stock pile at the Chipmill) which may not exceed the Net Export Price which is current at the time the hardwood chips are offered.

24.2 State Forests may disclose the terms of this clause to the domestic processor.

24.3 The Company must promptly provide State Forests with any information relevant to the Company's compliance with this **Clause 24** and any documentary evidence supporting that information, as may be requested by State Forests in writing.

24.4 For the purposes of this **Clause 24**:

"domestic processor" means a person who converts hardwood chips into another product within Australia;

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"Net Export Price" means the Gross Export Price less Export Handling Costs;

"Gross Export Price" means the minimum price \$/ BDMT of hardwood chips Free on Board agreed between the Company and Daishowa Paper Manufacturing Co. Ltd. during the period of twelve months prior to the date the Net Export Price is to be calculated for the purposes of **Clause 24.1.3**;

"Export Handling Costs" means the costs the Company would incur in loading the hardwood chips (proposed to be offered in accordance with **Clause 24.1.3**) from the Company's stockpile at the Chipmill into a moored bulk carrier for export, such that when subtracted from the Gross Export Price and relevant allowances are made for moisture content and losses in loading , gives a residual value of woodchips in the stockpile.

25. SALE OF TIMBER ETC TO OTHER PERSONS

- 25.1 Except as provided in **Clause 33**, nothing in the Agreement shall affect the rights, powers and privileges acquired by any person (whether before or after the commencement of this Agreement) under the Act, or any other Act.
- 25.2 If quantities of Timber in the Area of Supply in excess of the Total Annual Supply specified in **Clause 8** become available for sale by State Forests, State Forests must ensure those quantities are offered for sale by public tender, unless they are offered exclusively to the Company or State Forests is required to make them available to another person in accordance with the policies and directions of the State of NSW or direction of the Minister.
- 25.3 Subject to the rights of the Company under this Agreement to take Timber in the Area of Supply nothing in this Agreement shall restrict State

Forests' powers pursuant to the Act, including but not limited to the right to sell to any other company, person or persons or to issue licences to any other company, person or persons, to obtain timber of any kind, products or forest materials, within the Area of Supply.

26. COMPLIANCE

- 26.1 The Company shall comply with the provisions of the Act, and all Regulations made thereunder prior to or during the term of this Agreement. The Company shall also comply with the conditions of licences issued under the Act to take Timber under this Agreement and shall take all reasonable action to ensure that any servants, agents or contractors who are engaged in obtaining Timber under this Agreement comply with such conditions.
- 26.2 The Company shall take all reasonable action to ensure that no person being a servant or agent of the Company or a contractor of the Company shall engage in obtaining timber for the purpose of this Agreement unless the person holds a current contractor's or operator's licence issued in accordance with the Forestry Regulation, 1994.
- 26.3 The Company shall, if so required by State Forests by written notice given to the Company terminate the contract of any contractor who in the opinion of State Forests, has failed to comply with any material provision of the Act or the conditions referred to in **Clause 26.1** or a licence referred to in **Clause 26.2**.
- 26.4 The Company shall ensure that all persons employed by the Company and sub-contractors and their employees are insured and are kept insured under an insurance policy pursuant to the Worker's Compensation Act, 1987, and any Act amending or replacing that Act.
- 26.5 The Company shall at all times, indemnify State Forests against all actions, proceedings, claims, demands and expenses in respect of or arising out of the negligent performance by the Company of its rights and obligations under this Agreement, except that this indemnity shall not be

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construed so as to prevent the Company proceeding against State Forests for breach by State Forests of its obligations under this Agreement.

27. CONSTRUCTION OF ROADS AND LOG DUMPS

- 27.1 State Forests shall construct and maintain permanent access roads in forest areas at an average intensity of eight kilometres per one thousand hectares as shown on the map attached as Schedule 1. These roads will conform to a minimum standard of all-weather to a general maximum grade of twelve and one half per cent with a permissible grade up to twelve and one half per cent for distances not exceeding 500 metres, and will be of a minimum formation width of 4.2 metres and a pavement width of 3.0 metres and of at least twenty kilometres per hour design speed standard as determined by State Forests. The distance of eight kilometres will include public roads which meet these specifications.
- 27.2 If State Forests makes timber available by issuing licences to the Company, the Company will construct all roads and loading dumps necessary to take the timber, other than permanent access roads, at its own expense and as directed by State Forests. The location and design of these shall be subject to the approval of State Forests; provided that State Forests, or any person authorised by it, shall be empowered to use such roads and dumps at any time and for any purposes.
- 27.3 State Forests shall maintain Edrom Road at its existing design standard and in a reasonable and stable condition. Upgrading and reconstruction will be at State Forests' discretion.

28. FORCE MAJEURE

- 28.1 If State Forests is prevented from performing all or any of its obligations under this Agreement by reason of Force Majeure:

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28.1.1 the Company will have no claim against State Forests under this Agreement, to the extent that the non-performance is due to the Force Majeure;

28.1.2 if State Forests is unable to resume the performance of its obligations within a period of 12 months from the date of the occurrence of the Force Majeure or the date when the occurrence of the Force Majeure first became apparent (the 'relevant date') either party may terminate this Agreement by written notice. The right to give notice under this clause must be exercised within a period of 15 months from the relevant date and in this regard time will be of the essence; and

28.1.3 If due to Force Majeure the amount of Timber available in the Area of Supply is reduced below the level necessary to make the Total Annual Supply available to the Company State Forests may allocate any Timber which is available to the Company and other persons in a manner which reflects State Forests functions and obligations under the Act and accords with any directions of the Minister.

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

29. LEGAL RESPONSIBILITY AND LIMITATION OF LIABILITY

29.1 Where the Company is prevented from taking timber as a result of any breach of this Agreement:

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29.1.1 by an act or omission of State Forests, then State Forests and not the State of NSW will be the party, if any, responsible to the Company for any loss suffered; or

29.1.2 by an act or omission of the State of NSW, the State of NSW and not State Forests will be the party, if any, responsible to the Company for any loss suffered; or

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

29.2 Where State Forests or the State of NSW is in breach of this Agreement by reason of any failure to make timber available or to supply or deliver timber any claim for loss suffered by the Company will be limited to the lesser of;

29.2.1 the loss, damage or expense which would be incurred by the Company as a direct result of obtaining the timber (which State Forests failed to make available, supply or deliver) from the most economic alternate source; or

29.2.2 the Company's loss of profits,

and will not otherwise include any consequential loss.

30. DAMAGE OR DESTRUCTION OF PLANT, ETC

30.1 If -

30.1.1 The Chipmill is damaged or destroyed by fire or other calamity;
or

30.1.2 the continuance of the production of woodchips in an economic manner is rendered impossible by any cause beyond control of the Company; or

30.1.3 by reason of war, strike, lockout or action in the nature of a strike or lockout, the Company is prevented from obtaining timber under this Agreement or from carrying on production of woodchips in an economic manner; or

30.1.4 the Total Annual Supply is not available through any cause beyond the control of the Company, or

30.1.5 the Company is unable to sell all or a significant part of the products it produces from Timber under this Agreement because of:

- (a) a major collapse of the international market for hardwood chips;
- (b) the provisions of any international treaty affecting the sale of hardwood chips; or
- (c) an act of parliament or other government decision affecting the sale of hardwood chips; or
- (d) the Daishowa Paper Company is liquidated or ceases trading at a point in time when it is purchasing in excess of 75% of the Company's annual export of hardwood chips; and
- (e) the Company has demonstrated to the reasonable satisfaction of State Forests that it has used its best endeavours to sell the said products or on-sell the Timber or otherwise mitigate the effects of the cause;

then -

30.1.6 the Company may apply to State Forests for suspension or a reasonable modification of the extent or operation of its

obligations under this Agreement or for an extension of time for the performance or observance thereof, and

30.1.7 State Forests, upon any such application by the Company, shall not unreasonably withhold a suspension of the said obligations or a reasonable modification of their extent or operation or an extension of time for their performance or observance provided always that any suspension or modification granted in relation to an event referred to in **Clause 30.1.5(d)** may not exceed 18 months.

31. ASSIGNMENT

31.1 The Company shall not without the prior consent of State Forests and approval of the Minister assign its rights and responsibilities under this Agreement to any person.

31.2 In considering whether to give its consent to any proposed assignment State Forests shall have regard to the public interest and in particular may take into account the capacity of the proposed assignee to perform the Company's obligations under this Agreement, the acceptability of the proposed assignee to the State of NSW, the quantum of any consideration paid or to be paid to the Company by the proposed assignee, the likely socio-economic effects of the proposed assignment, possible future developments in the industry and any other matter it thinks fit, provided that its consent shall not be unreasonably withheld.

31.3 Any such consent given by State Forests may be subject to such conditions as may be determined by State Forests and accepted by the assignee but without limiting the generality of the foregoing shall be subject to the assignee executing all agreements and other documents which State Forests considers necessary for the purpose of ensuring that the assignee shall be subject to all the obligations and conditions imposed upon the Company by this Agreement so far as they remain in force and are capable of taking effect.

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32. TERMINATION

32.1 If the Company either -

32.1.2 enters into liquidation (other than by a voluntary liquidation for the purposes of reconstruction and assignment of rights under this Agreement); or

32.1.2 contravenes or fails to comply with the terms and conditions of this Agreement and such default is not remedied by the Company to the satisfaction of State Forests, within a period of thirty (30) days after notice of same has been served on the Company;

State Forests may thereupon terminate this Agreement.

32.2 If for reasons other than Force Majeure State Forests fails for 2 consecutive Years to make 50% or more of the Total Annual Supply available to the Company, the Company may, by notice in writing to State Forest, terminate this Agreement.

32.3 The expiration or termination of this Agreement shall not affect the right of either party to enforce any right, obligation or liability previously acquired hereunder.

33. RELEASE

33. The Company and State Forests each hereby release and discharge the other of them together with Her Majesty Her Heirs and Successors and the Minister and Successors in office and the State of New South Wales and the Government thereof and the officers servants and agents of each and every one of them and all public officers of the said State from all liability in respect of any prior agreements or arrangements, in particular the Earlier Agreement, relating to the supply of timber from the Area of Supply and from all actions, suits, causes of action, claims, demands,

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costs, charges and expenses whatsoever which either party now has or at any time hereafter may have or but for the execution of this Agreement could or might have had against them or any of them for or in respect of any breach of the provisions of any prior agreements or arrangements as aforesaid.

34. MINISTERS APPROVAL

34. By his execution hereof the Minister approves this Agreement.

35. RESOLUTION OF DISPUTES - MANDATORY MEDIATION AND ARBITRATION

35.1 If a dispute or difference between the parties arises out of or in connection with this Agreement or concerning the interpretation or operation of any provision of this Agreement (except **Clause 5**) which cannot be settled by the parties within fourteen (14) days, the parties agree that they must endeavour to settle the dispute or difference by mediation before having recourse to arbitration. The mediator must be a person agreed by the parties or failing agreement a party may request the Australian Commercial Disputes Centre (ACDC) to appoint a mediator and the mediator will be so appointed.

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

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

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Any arbitration must be conducted by a person acceptable to the parties but if the parties are unable to agree to the appointment of an acceptable person within fourteen (14) days of one party giving the others a written nomination of a suitable person or persons, then a party may request the President for the time being of the Institute of Arbitrators, Australia, to appoint an arbitrator and the arbitrator will be so appointed. Any arbitration must be undertaken in accordance with, and subject to, The Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

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

35.4 In so far as the provisions of this **Clause 35** apply to **Clauses 20 and 21** the issue for consideration by any mediation or arbitration regarding Price or cost of undertaking the Contract Harvesting (as the case may be) in dispute (the "disputed item"), shall be limited to a determination as to whether proper consideration was given to the factors set out in **Clause 20 or 21** (as the case may be) to be taken into account in determining the disputed item. To avoid any doubt any such arbitration may not review the disputed item on its merits and may not determine the Price or the cost of undertaking the Contract Harvesting which is to apply.

35.5 If an arbitration regarding a disputed item determines improper consideration was given to the factors required to be taken into account in determining the disputed item referred to in **Clause 35.4**, the State Forests determination of the disputed item will be void ab initio and State Forests must:

35.5.1 promptly redetermine the disputed item which will then apply from the first date the disputed item was originally intended to apply;

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35.5.2 refund to the Company any over payment made under the disputed item.

35.6 Any re-determination of a disputed item under **Clause 35.5** may be subject to arbitration in accordance with **Clause 35.4**.

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

36. **VARIATION**

36. No variation or amendment of this Agreement shall be binding unless made in writing and signed by the parties.

37. **NOTICE**

37. Any notice required to be served under this Agreement may be served upon the Company by delivery or posting the same to its registered office and upon State Forests by delivery or posting the same to State Forests and addressed to the Secretary.

38. **GOVERNING LAW**

38. This Agreement shall be governed by and interpreted in accordance with the Laws of New South Wales.

39. **SEVERABILITY**

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

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40. CONFIDENTIALITY

40. No party will disclose the contents of this Agreement or any information or documents received by it in connection with the negotiation of this Agreement or pursuant to the provisions of this Agreement without the prior written consent of the other parties, except to the extent that:

40.1 the information is available to the public generally;

40.2 that party is required to make the disclosure by law or to make any filing, recording or registration required by law;

40.3 the disclosure is necessary or advisable for the purpose of obtaining any consent, authorisation, approval or licence from any public body or authority;

40.4 it is necessary that the disclosure be made to any taxation or fiscal authority;

40.5 the disclosure is made on a confidential basis to the professional advisers of that party for the purpose of obtaining advice in relation to this Agreement or the enforcement of this Agreement or otherwise for the purpose of consulting those professional advisers; or

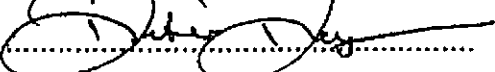
40.6 the disclosure is required or desirable to be made in pursuance of any procedure for discovery of documents and any proceedings before any court, tribunal or regulatory body.

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

I, **ROBERT PATRICK SMITH**)
the Chief Executive Officer of the)
Commission have hereunto affixed the)
Seal of the **FORESTRY COMMISSION**)
OF NEW SOUTH WALES)

in the presence of:)


.....

Witness



.....
Chief Executive Officer

THE COMMON SEAL of)
HARRIS-DAISHOWA (AUSTRALIA))
PTY. LTD. (ACN: 000 604 795))

was hereunto affixed in accordance)
with its Articles of Association)
in the presence of:)


.....

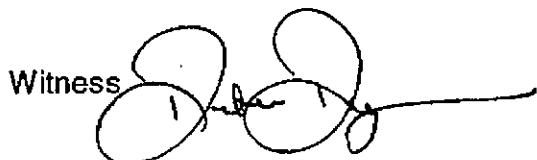
Company Secretary

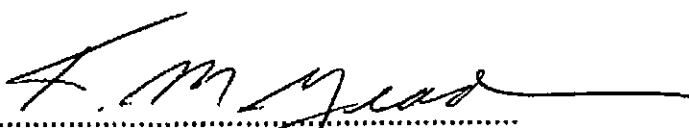


.....
Managing Director

29/9/99

SIGNED SEALED AND DELIVERED)
by **THE HONOURABLE KIMBERLEY**)
MAXWELL YEADON, Minister for)
Forestry in and for the State of)
New South Wales for and on behalf)
of the Crown (but not so as to incur)
personal liability) in the presence of:)

Witness 



.....
Minister for Forestry

SCHEDULE 1

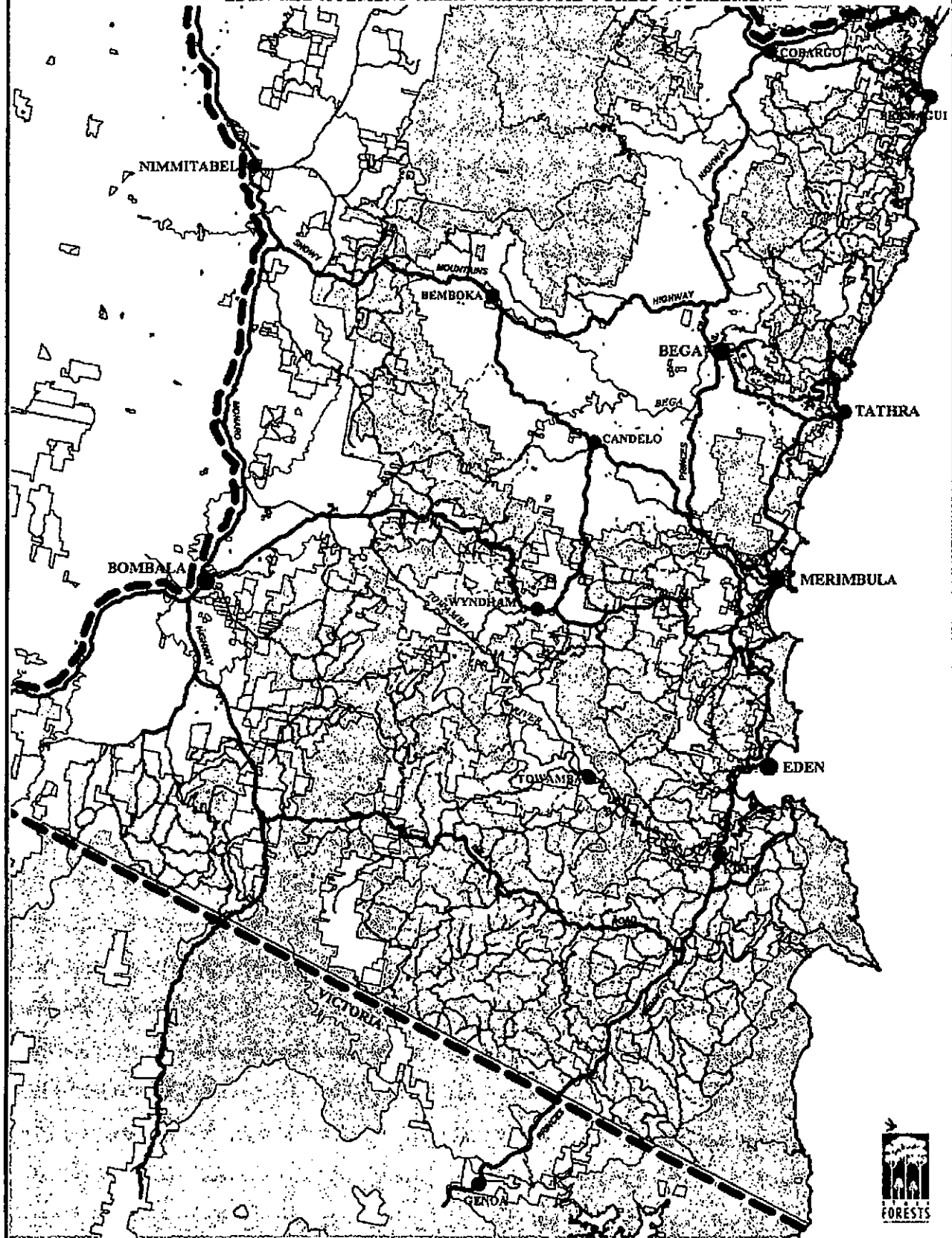
Area of Supply

WILL BE A MAP SHOWING ; EDEN MA
EDEN RFA AREA(THEY ARE A COMMON BOUNDARY)

LAND TENURE , MAJOR ROADS TOWNS ETC.

AREA OF SUPPLY
EDEN MANAGEMENT AREA / REGIONAL FOREST AGREEMENT

SCHEDULE 1



- NATIVE STATE FORESTS
- PINE STATE FORESTS
- CROWN LANDS
- NATIONAL PARKS
- PRIVATE PROPERTY

LEGEND

5 0 5 10 15 20 Kilometers
 SCALE 1:580000

- PROPOSED ABORIGINAL TITLE

- PERMANENT MAJOR ROADS
- MINOR ROADS
- MAJOR DRAINAGE
- EDEN MANAGEMENT AREA
- EDEN REGIONAL FOREST AGREEMENT



DATE 13JAN98

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SCHEDULE 2

PULPWOOD SPECIFICATIONS

GENERAL SPECIFICATIONS ;

- Is of **species** agreed to be acceptable, the more common exclusions , being Ironbarks , Boxes , Woollybutt , Bloodwoods , Apple;
- Free of **charcoal** and outside **bark**;
- Log **lengths** to 2.0 m. minimum (4.0 m. in thinnings);
- Logs to be **flush** trimmed with **shattered** ends and **jagged** slovens removed;
- Logs to be harvested from **green** standing trees or from previously fallen trees which have **not completely** dried out;
- Logs to be free of **pronounced bends** or **sweep**. Gradual sweep is acceptable;
- **Logs over 85 cms.** large end diam. must be capable of being **split** . This means that spiral grain must not exceed one half of the circumference of the log over any 2.0 m. length , forks must be cut out , and heavy side limbs are not acceptable where these may prevent free splitting.

DEFECT TOLERANCES ;

Logs Under 40 cms. Diameter ;

- Defect must not exceed 50% of the diam.
- Minimum wood content is 10 cms. across the diam. (8 cms. in thinnings);

Logs Between 40 cms. and 85 cms. Diameter ;

- Logs must have an average of 10 cms. of solid wood between the pipe and the outside circumference of the log.

Logs Over 85 cms. Diameter ;

- Logs must have an average of 12.5 cms. of solid wood between the pipe and the outside circumference of the log.

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40.	CONFIDENTIALITY	40

Handwritten marks:
A small circle with a dot inside, and a stylized signature or mark.

VARIATION AGREEMENT

This Agreement is made the 29th day of SEPTEMBER 1999.

1. PARTIES

- 1.1 **THE FORESTRY COMMISSION OF NEW SOUTH WALES** a corporation constituted under the Forestry Act 1916 trading as **STATE FORESTS ('State Forests')**
- 1.2 **HARRIS-DAISHOWA (AUSTRALIA) PTY. LTD., (ACN 000 604 795)** ('the Company')
- 1.3 **THE STATE OF NEW SOUTH WALES ('the State of NSW')**

2. RECITALS

- 2.1 The parties entered into an agreement for an annual supply of pulpwood timber from the Eden Management Area for 20 years commencing 1 January 1999 ('the Wood Supply Agreement').
- 2.2 The parties wish to amend the Wood Supply Agreement.
- 2.3 This Agreement is an amendment to the Wood Supply Agreement in accordance with its Clause 36.

3. AMENDMENTS

The Wood Supply Agreement is amended in accordance with Schedule 1 hereto.

4. COMMENCEMENT

The amendments specified in clause 3 of this Agreement take effect on and from the date of this Agreement.

E. A. 1

Schedule 1

Clause 30.1.5

Delete paragraph (d) and insert instead:

“(d) the Daishowa Paper Company is liquidated or has a petition for bankruptcy, corporate reorganisation or similar procedure granted by a court in Japan and as a result is unable to purchase hardwood chips from the Company; and”

Clause 30.1.6

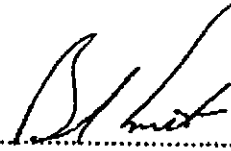
Insert after “thereof” the words “without any penalty to the Company”


Clause 30.1.7

Delete “provided always that any suspension or modification granted in relation to an event referred to in Clause 30.1.5(d) may not exceed 18 months”.

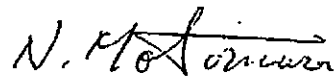
IN WITNESS whereof the parties hereto have executed this Agreement as a Deed the day and year first hereinbefore written.

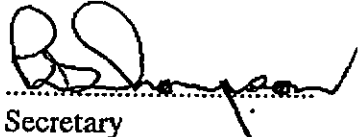
I, ROBERT PATRICK SMITH)
Chief Executive Officer of State Forests)
have hereunto affixed the)
Seal of the FORESTRY COMMISSION)
OF NEW SOUTH WALES)
in the presence of:)


.....

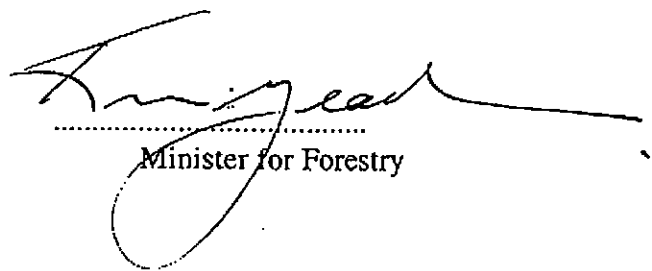

.....
Secretary

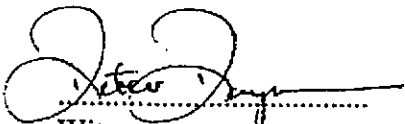
THE COMMON SEAL of)
HARRIS-DAISHOWA (AUSTRALIA))
PTY LTD was hereunto affixed)
in accordance with its Articles of Association)
in the presence of:)


.....
MANAGING DIRECTOR
29/9/99


.....
Secretary

SIGNED SEALED AND DELIVERED)
by THE HONOURABLE)
KIMBERLEY MAXWELL YEADON)
Minister for Forestry in and for the State)
of New South Wales for and on behalf)
of the Crown (but not so as to incur)
personal liability) in the presence of:)


.....
Minister for Forestry


.....
Witness