



Agreement

Dated [11 January 2008]

The Crown in Right of Tasmania (“Crown”)

and

Gunns Limited (“Gunns”)

and

Forestry Tasmania (“FT”)

The Crown Solicitor of Tasmania

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Agreement

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Details

Parties	State, Gunns, FT	
State	Name	The Crown in Right of Tasmania (“State”)
	Address	The Treasury Building, 21 Murray Street, Hobart in Tasmania
	Telephone	(03) 6233 3100
	Fax	(03) 6223 2755
	Attention	Secretary, Department of Treasury and Finance
Gunns	Name	Gunns Limited (“Gunns”)
	ABN	29 009 478 148
	Address	78 Lindsay Street, Launceston in Tasmania
	Telephone	(03) 6335 5201
	Fax	(03) 6334 7909
	Attention	Managing Director
FT	Name	Forestry Tasmania (“FT”)
	ABN	91 628 769 359
	Address	79 Melville Street, Hobart in Tasmania
	Telephone	(03) 6233 8180
	Fax	(03) 6233 8156
	Attention	Managing Director
Recitals	A	Gunns wishes to construct and operate a bleached kraft pulp mill near Bell Bay in northern Tasmania (“Pulp Mill”).

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- B** Gunns and FT have agreed the terms on which Pulpwood will be made available by FT to Gunns from State Forests for use by Gunns in Pulp Mill Operations (and for other purposes) and those terms are set out in the WSA.
 - C** Pulpwood supply under the WSA may be affected by changes in law by either the State or the Commonwealth, and to give Gunns sufficient certainty to enable it to proceed with the construction of the Pulp Mill, Gunns has requested that the State give it the benefit of certain undertakings in relation to the effect of possible changes in law on the supply of Pulpwood under the WSA.
 - D** In consideration of Gunns undertaking the construction and operation of the Pulp Mill, and entering into the WSA, the State agrees to the terms set out in this agreement.
 - E** Gunns and FT also agree to comply with their respective obligations under this agreement.

Date of agreement

See Signing page

Part 1 – Definitions, Interpretations, Agreement Duration and General

1 Definitions and interpretations

1.1 Definitions

In this agreement unless the contrary is expressed or the context requires otherwise:

“Adjusted Net Cost Impact” means the Net Cost Impact, adjusted in accordance with clause 8.2;

“Adverse Net Cost Impact” means a Net Cost Impact which is greater than zero;

“Alternative Wood” means Pulpwood which complies with the specifications for Pulpwood under Schedule 3 of the WSA;

“Business Day” means a day (not being a Saturday or Sunday) on which banks (as defined in the Banking Act 1959 (Cwlth)) are open for business in Hobart;

“Commencement Date” means the date on which the WSA commences;

“Commissioned” means that:

- (a) all Pulp Mill processes and major items of equipment have been tested and demonstrated to operate satisfactorily and in accordance with all applicable requirements under the Pulp Mill Permit; and
- (b) Pulp Mill Operations have commenced;

“Commissioning Date” means the date:

- (a) notified by Gunns in writing to the State and FT; and
- (b) approved by the Director of Environmental Management in writing,

as being the date upon which the Pulp Mill was Commissioned;

“Commonwealth” means the Commonwealth of Australia;

“Commonwealth Change in Law” means action taken by the Commonwealth, as a result of which, the Commonwealth must pay compensation to the State under clause 95.1 of the RFA;

“Commonwealth Shortfall Quantity” means (subject to clause 9.2) in relation to the relevant Planning Year WSA Wood Quantity, any part of that quantity that FT fails to supply to Gunns in that Planning Year due to a

Commonwealth Change in Law that is the subject of a Commonwealth Suspension Period;

“Commonwealth Suspension Period” means a period in which FT is relieved (in whole or in part) of its obligations to supply WSA Wood to Gunns due to a Force Majeure Notice that is given as a result of a Commonwealth Change in Law;

“Contractor Relocation Costs” means the additional direct costs to Gunns, incurred as a direct result of Gunns procuring or sourcing Alternative Wood in accordance with clause 7 to replace (in whole or in part) any State Shortfall Quantity, of relocating a harvesting contractor of Gunns:

- (a) from the coupe in which that harvesting contractor was operating immediately prior to the commencement of the State Suspension Period; and
- (b) to a coupe from which the Alternative Wood is being procured or sourced by Gunns in accordance with clause 7;

“Defaulting Party” has the meaning given to it under clause 14.2;

“Default Notice” means a notice given in accordance with clause 14.2(a) and (b);

“Director of Environmental Management” means the Director as defined under the *Environmental Management and Pollution Control Act 1994* (Tas);

“Dispute” means a dispute or difference of any kind between the State and Gunns arising under, out of, or in connection with, this agreement, whether before or after breach or termination of this agreement;

“Force Majeure Notice” means a written notice issued by FT in accordance with clause 12.4 of Schedule 13 of the WSA;

“Gunns RFA Compensation Claim” means any claim for compensation that may be made by the State against the Commonwealth in accordance with clause 95.2 of the RFA for loss or damage incurred by Gunns to procure or source Alternative Wood to replace (in whole or in part) any Commonwealth Shortfall Quantity;

“Law” means legislation, subordinate legislation, ministerial charter, statutory rules, regulations, statutory directions, statutory orders and orders-in-council with which FT is legally required to comply;

“Net Cost Impact” has the meaning given to it under clause 8.1;

“Non-Defaulting Party” has the meaning given to it under clause 14.2;

“Planning Year” means each period from 1 July to the following 30 June occurring during the term of this agreement, or any part of such a period occurring at the beginning or end of the term of this agreement;

“Planning Year WSA Wood Quantity” means the quantity of WSA Wood that must be supplied in a Planning Year. For this definition only, that quantity is to be determined, in accordance with the WSA, as though any reduction in the quantity of WSA Wood that applies for that Planning Year under the WSA due to the relevant Commonwealth Suspension Period or State Suspension Period (as the case may be) did not apply;

“Positive Net Cost Impact” means a Net Cost Impact which is less than zero;

“Project” means the supply of WSA Wood from State Forest by FT to Gunns under the WSA for use by Gunns in Pulp Mill Operations and for other purposes;

“Project Specific State Change in Law” has the meaning given to it under clause 5.1;

“Pulp Mill” has the meaning given to it under Recital A;

“Pulp Mill Construction” means the carrying out of all construction activities (as that term is defined in the Pulp Mill Permit) which, from time to time, are necessary to construct the Pulp Mill;

“Pulp Mill Operations” means the pulping of Pulpwood at the Pulp Mill for the commercial production and sale of pulp;

“Pulp Mill Permit” has the meaning given to it under the *Pulp Mill Assessment Act 2007* (Tas);

“Pulpwood” has the meaning given to it under the WSA;

“Replacement RFA” has the meaning given to it under clause 9.6;

“Replacement Quantity” has the meaning given to it under clause 8.1;

“RFA” means the agreement entitled “Tasmanian Regional Forest Agreement” between the Commonwealth and the State dated 8 November 1997;

“State Change in Law” means any of the following actions by the State, if it occurs after the execution of this agreement:

- (a) the making of a new Law; or
- (b) the amendment or repeal of any Law,

but excluding any such actions taken by the State as a result of, or in connection with, a Commonwealth Change in Law. For the purposes of this definition (but not for other purposes), “State” means the State, a

Minister of the Crown in right of Tasmania, or a statutory officer or statutory authority of the State (not including a council or local authority);

“State Forest” has the meaning given to it under the *Forestry Act 1920* (Tas);

“State Shortfall Quantity” means (subject to clause 4.2) in relation to the relevant Planning Year WSA Wood Quantity, any part of that quantity that FT fails to supply to Gunns in that Planning Year due to a Project Specific State Change in Law that is the subject of a State Suspension Period;

“State Suspension Period” means a period in which FT is relieved (in whole or in part) of its obligations to supply WSA Wood to Gunns due to a Force Majeure Notice that is given as a result of a Project Specific State Change in Law;

“WSA” means the agreement entitled “Contract of Sale No. 917” between FT and Gunns dated 20 December 2007 and included in the exhibit to this agreement signed by the parties on or about the date of this agreement;

“WSA Wood” means Pulpwood that FT is required, under the WSA, to supply to Gunns.

1.2 Interpretation

In this Agreement, unless the contrary intention is expressed:

- (a) a reference to this agreement includes its schedules, appendices, annexures and attachments, and any variation or replacement of any of it;
- (b) a reference to a statute, ordinance, code or other legislative instrument includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and conversely;
- (d) a reference to a person includes:
 - (i) an individual, a firm, a body corporate, an unincorporated association or a statutory or responsible authority or other authority, as constituted from time to time; and
 - (ii) the person’s executors, administrators, successors and permitted assigns;
- (e) an agreement, representation or warranty by, or for, two or more persons binds, or is for their benefit, together and separately;
- (f) a covenant forbidding a person from doing something, also forbids that person from authorising or allowing another person to do it;

- (g) a reference to anything (including an amount) is a reference to all or any part of it, and a reference to a group of persons is a reference to any one or more of them;
- (h) a reference to a clause, paragraph, schedule, annexure or appendix, is a reference to a clause, paragraph, schedule, annexure or appendix in or to this agreement;
- (i) a reference to a day is to be interpreted as the period of time starting at midnight and ending twenty-four (24) hours later;
- (j) a reference to a month or a year means a calendar month or a calendar year respectively;
- (k) words or phrases derived from a defined word have a corresponding meaning to the defined word;
- (l) a term of inclusion is not to be interpreted to be a term of limitation;
- (m) all payments referred to in, or to be made under, it must be in Australian dollars;
- (n) a reference to the payment of money within a specified time, means the full clearance of any cheque into the payee's account within that time;
- (o) it operates under Tasmanian time;
- (p) if the day on or by which an act, matter or thing is to be done under it is not a Business Day, then that act, matter or thing must be done no later than the next Business Day;
- (q) an uncertainty or ambiguity in the meaning of a provision is not to be interpreted against a party only because that party prepared the provision; and
- (r) headings are included for convenience only, do not form part of it, and are not to be used in its interpretation.

2 Duration

2.1 Term

This agreement commences on the Commencement Date and, unless terminated earlier, expires on the earlier of:

- (a) 31 December 2027; or
- (b) any earlier termination or expiry of the WSA.

2.2 Duration of Part 3

For the avoidance of doubt, despite clause 2.1, Part 3 of this agreement expires in accordance with clause 9.6.

3 General

3.1 Obligations under WSA not affected by this agreement

For the avoidance of doubt, nothing in this agreement affects the rights or obligations of Gunns or FT under the WSA, which must be interpreted in accordance with its terms.

3.2 Notice of Commissioning Date to be given by Gunns

Gunns must give written notice of the Commissioning Date, to the State and FT, within five (5) Business Days of that date having occurred, and must provide written evidence of the Director of Environmental Management's approval of that date with that notice.

Part 2 – State Change in Law

4 Project Specific State Change in Law compensable

4.1 State compensation

If:

- (a) a Project Specific State Change in Law causes a failure by FT to supply WSA Wood (in whole or in part) as required under the WSA; and
- (b) in relation to that failure to supply, FT issues Gunns with a Force Majeure Notice, such that a State Suspension Period applies;

then the State must, subject to clauses 6, 7 and 8, compensate Gunns for the Adjusted Net Cost Impact suffered by Gunns as a result of that Project Specific State Change in Law.

4.2 State Shortfall Quantity

A State Shortfall Quantity may only be taken to exist if:

- (a) the total supply of Pulpwood by FT under the WSA in a Planning Year is less than the Planning Year WSA Wood Quantity; and
- (b) the relevant shortfall in the supply of the Planning Year WSA Wood Quantity is established to be caused by a Project Specific State Change in Law that is the subject of a State Suspension Period.

4.3 Limit of compensation

Subject to clause 4.1, Gunns is not entitled to any further or other compensation or damages from the State for or in connection with Project Specific State Changes in Law.

5 Meaning of Project Specific State Changes in Law

5.1 Project Specific State Changes in Law

A Project Specific State Change in Law is a State Change in Law, the terms of which, expressly or in effect:

- (a) prevent or limit:
 - (i) the use of State Forest; or
 - (ii) the sale or commercial use of Pulpwood sourced from State Forest,

such that FT's ability to supply WSA Wood from State Forest to Gunns for the purpose of the WSA is affected by the State Change in Law (whether or not the supply by FT to other persons of wood from State Forest is also affected); and

- (b) do not prevent or limit:
 - (i) the use of any land which is not State Forest; or
 - (ii) the sale or commercial use of wood sourced from any land which is not State Forest,

such that the ability of any person to supply wood from any land which is not State Forest is unaffected by the State Change in Law.

5.2 Exceptions

For the avoidance of doubt, a State Change in Law will not be a Project Specific State Change in Law solely on the basis that its effect on FT or Gunns is greater than its effect on other persons.

6 Threshold and other preconditions to payment of compensation

Despite any other provision of this agreement, compensation is only payable by the State under clause 4:

- (a) provided that Gunns uses its best endeavours to mitigate any costs incurred as a result of the relevant Project Specific State Change in Law;
- (b) provided that Gunns notifies the State of the relevant Project Specific State Change in Law and its effect as soon as possible after Gunns becomes aware (or should have reasonably been aware) of the changes or its effects;
- (c) provided that Gunns complies with clauses 7 and 8;
- (d) in relation to a State Shortfall Quantity only and no compensation is payable in relation to any other wood to be supplied to or for Gunns;
- (e) in relation to costs incurred in accordance with clause 8 as a result of the relevant Project Specific State Change in Law and no compensation is payable for any other costs or costs which would have been incurred regardless of the Project Specific State Change in Law;
- (f) to the extent that the aggregate amount of the Adjusted Net Cost Impact arising from a Project Specific State Change in Law exceeds \$750,000, and compensation is only payable for any part of the Adjusted Net Cost Impact arising from that Project Specific State Change in Law that is above that threshold; and

- (g) to a maximum aggregate total amount, in relation to all claims and all Project Specific State Changes in Law, of \$15,000,000, and if compensation to that maximum aggregate total amount is paid by the State, no further compensation is payable by the State despite any further costs, loss or damage which Gunns may incur in connection with any Project Specific State Changes in Law.

7 Mitigation requirements

If a State Suspension Period applies:

- (a) the parties will cooperate during the State Suspension Period, in accordance with this clause 7 (or as otherwise agreed in writing by the parties);
- (b) the replacement by Gunns of any State Shortfall Quantity with Alternative Wood must be in accordance with the following:
 - (i) Gunns must use its best endeavours to mitigate its loss, including by seeking all available wood resources (including its own, where such wood resource is not covered by a contract or a current utilization plan) to replace the State Shortfall Quantity at the least cost and at the best available prices in the market at the time for wood of the same or similar specification able to meet the requirements of the Pulp Mill or other use (including any reasonable requirements in relation to the time and place for delivery);
 - (ii) the parties must meet, within a reasonable time of a request by any party, to seek to agree on, or to review from time to time, the best method of replacing any State Shortfall Quantity taking into account the following methods in the following priority (unless otherwise agreed in writing):
 - (A) firstly, FT may elect to make Alternative Wood available from an alternative source and if it does so, then FT may make it available and Gunns shall accept it at the same price as if it had been made available from the land from which the State Shortfall Quantity was to be supplied under the WSA;
 - (B) secondly, if any State Shortfall Quantity remains after taking into account any supply from time to time under paragraph (A), a competitive procurement process will be implemented by Gunns seeking a Tasmanian supplier (which may include Gunns) in accordance with procurement processes and methods to be agreed by the parties (acting reasonably);

- (C) thirdly, if any State Shortfall Quantity remains after taking into account any supply from time to time under paragraphs (A) and (B) and if the State and FT are satisfied (acting reasonably) that there is insufficient Alternative Wood available in Tasmania, a similar procurement process will be implemented by Gunns for supply from outside Tasmania in accordance with procurement processes and methods to be agreed by the parties (acting reasonably);

provided that, if any source of supply identified under the process described in clause 7(b)(i) is demonstrated to the satisfaction of the parties (acting reasonably) to be more favourable than those under clause 7(b)(ii) in terms of cost, then the source identified under the process described in clause 7(b)(i) shall prevail.

8 Net Cost Impact and claims process

8.1 Net Cost Impact

The Net Cost Impact in relation to any State Shortfall Quantity will be determined in accordance with the following formula, subject to clause 6 and subject to the adjustment process under clauses 8.2 and 8.4:

$$\text{NCI} = \text{AC} - \text{FTC}$$

where:

NCI is the Net Cost Impact;

AC is the actual cost incurred by Gunns to procure or source Alternative Wood in accordance with clause 7 to replace (in whole or in part) the State Shortfall Quantity on the basis that:

- (a) the cost is on a delivered price basis;
- (b) any Contractor Relocation Costs are included;
- (c) any rebates, discounts, allowances or other credits available or paid to Gunns, or other costs avoided by Gunns, in connection with the acquisition by Gunns of that Alternative Wood must be deducted from the cost;
- (d) no internal handling, management, labour, agency, commission, interest, overheads or other costs incurred by Gunns may be added or included; and
- (e) the quantity of Alternative Wood must match the actual quantity procured or sourced by Gunns to replace (in whole or in part) the State Shortfall Quantity, but must not exceed the State Shortfall Quantity (“Replacement Quantity”);

FTC is FT's contracted price under the WSA for the supply of the Replacement Quantity from the land applicable under the delivery program which was current immediately prior to the commencement of the State Suspension Period, including the harvesting, freight, road tolls, supervision and/or administration costs or charges that would have been payable under the WSA had the Replacement Quantity been supplied under the WSA under that delivery program (with those costs or charges being calculated using the average rate for the applicable cost or charge during the 12 months prior to the commencement of the State Suspension Period).

8.2 Adjustment of Net Cost Impact

The parties acknowledge that, from time to time, there may be a Positive Net Cost Impact and the parties agree that the State must be given the benefit of any Positive Net Cost Impact by means of an amount equivalent to the Positive Net Cost Impact being, at the State's election, either:

- (a) set-off against any Adverse Net Cost Impact which the State owes to Gunns; or
- (b) paid to the State by Gunns.

8.3 Claims process

In respect of claims for compensation under clause 4 for Adjusted Net Cost Impact:

- (a) Gunns must submit a claim setting out details of any Adverse Net Cost Impact or Positive Net Cost Impact to FT and the State in writing on a yearly basis, within 2 months of the end of the Planning Year in which the relevant State Shortfall Quantity occurred;
- (b) for the avoidance of doubt, to enable the aggregate Adjusted Net Cost Impact to be determined, claims must be submitted by Gunns in accordance with paragraph (a) whether or not the minimum threshold for compensation under clause 6(f) has been reached or exceeded;
- (c) any claims must be for an express amount and must give detailed particulars of the claim (including the basis upon which Gunns considers a State Shortfall Quantity to exist) and the manner in which it has been calculated;
- (d) each claim must be accompanied by supporting invoices, delivery dockets, weighbridge records and a receipt which matches the delivery dockets and weighbridge records;
- (e) Gunns must promptly provide all information, documents or material reasonably requested by FT or the State for verification of any claim including production of accounts, books and records (of which FT or the State may make copies);

- (f) if:
 - (i) the State and FT agree with a claim by Gunns, or the matter is determined as a result of any Dispute as to the claim raised under clause 15; and
 - (ii) the Adjusted Net Cost Impact is for an Adverse Net Cost Impact;then, subject to clause 6:
 - (iii) the State must pay the amount owing in respect of the claim to Gunns within one month of agreement or the outcome of any Dispute as to the claim (as the case may be) being reached; and
 - (iv) upon payment of that amount, Gunns releases the State from any other claims arising out of or in connection with the Project Specific State Change in Law in relation to the period to which that claim relates; and
- (g) each payment made by the State in respect of Net Cost Impact is made subject to the adjustments process required under clause 8.2 or 8.4; and
- (h) if claims are not received within the time required under paragraph (a), then Gunns is deemed to have waived its rights under this agreement for compensation in relation to any State Shortfall Quantity occurring in any Planning Year for which a claim is not received in accordance with paragraph (a).

8.4 Final Settlement Adjustment

- (a) As soon as practicable after the end of a State Suspension Period, the State must prepare and submit to Gunns an account showing the:
 - (i) aggregate of Positive Net Cost Impact;
 - (ii) aggregate Adverse Net Cost Impact payable by the State to Gunns,

arising from the relevant Project Specific State Change in Law and, to the extent that either the State has not been given the benefit of, or been paid, the amount under paragraph (i), or any amount under paragraph (ii) has not been paid to Gunns or set-off against an amount under paragraph (i), an adjustment must be made between the State and Gunns.

- (b) Gunns must promptly provide all information, documents or material reasonably requested by FT or the State in connection with the account or adjustment process under paragraph (a), including production of accounts, books and records (of which FT or the State may make copies).

Part 3- Commonwealth Change in Law

9 Commonwealth Change in Law

9.1 Action to be taken by State for a Commonwealth Change in Law

If:

- (a) a Commonwealth Change in Law causes a failure by FT to supply WSA Wood (in whole or in part) as required under the WSA;
- (b) in relation to that failure to supply, FT issues Gunns with a Force Majeure Notice, such that a Commonwealth Suspension Period applies; and
- (c) the cost to Gunns of replacing the Commonwealth Shortfall Quantity with Alternative Wood exceeds the cost Gunns would otherwise have incurred under the WSA,

then the State must, subject to Gunns complying with clause 9.4, take all action reasonably available to it under clause 95 of the RFA to claim or recover compensation from the Commonwealth in relation to any Gunns RFA Compensation Claim, and to pay to Gunns such compensation as is received from the Commonwealth by the State for any such Gunns RFA Compensation Claim.

9.2 Commonwealth Shortfall Quantity

A Commonwealth Shortfall Quantity may only be taken to exist if:

- (a) the total supply of Pulpwood under the WSA in a Planning Year is less than the Planning Year WSA Wood Quantity; and
- (b) the relevant shortfall in the supply of the Planning Year WSA Wood Quantity is established to be caused by a Commonwealth Change in Law that is the subject of a Commonwealth Suspension Period.

9.3 Provision of information and notice by FT

FT must provide the State with reasonable notice of a Force Majeure Notice and take all action reasonably available to it to promptly provide such information, documents or material in relation to the Force Majeure Notice as the State may require from time to time.

9.4 Provision of information and notice by Gunns

Gunns must provide the State with reasonable notice of a Gunns RFA Compensation Claim and take all action reasonably available to it to promptly provide such information, documents, material and support in relation to the Gunns RFA Compensation Claim as the State may require from time to time.

9.5 Part 3 applies to WSA Wood only

Despite any other provision of this agreement and for the avoidance of doubt, this Part 3 applies in relation to a Commonwealth Shortfall Quantity only and has no application to any other wood to be supplied to or for Gunns.

9.6 Termination of Part 3

- (a) Unless this agreement is terminated earlier, this Part 3 terminates on the date of termination of the RFA, which at the date of this agreement, and subject to any earlier termination or extension agreed between the State and Commonwealth, is due to occur on 7 November 2017.
- (b) If the RFA is replaced with an equivalent or substantially similar agreement (“Replacement RFA”), then the parties will use reasonable endeavours to discuss and seek to agree upon amendments to this agreement so that provisions consistent with this Part 3 may apply in relation to the Replacement RFA.

9.7 Limit of compensation

Subject to clause 9.1, Gunns is not entitled to any further or other compensation or damages from the State for or in connection with any Commonwealth Change in Law.

Part 4- General Terms

10 No WSA changes affecting this agreement without consent

10.1 WSA changes without consent not binding

The parties agree that any changes to the WSA which the State considers (acting reasonably) may materially adversely impact on the State's obligations under this agreement, are not valid or binding upon the State for the purposes of this agreement unless the State has received prior written notice of any such change and has given its prior written consent to any such change.

10.2 Non-application of WSA changes made without consent

Any changes to the WSA which the State considers (acting reasonably) may materially adversely impact on the State's obligations under this agreement and which are made without the State being given prior notice, or the State giving its prior written consent, must be disregarded for the purposes of interpreting and applying this agreement.

11 Records

11.1 Maintenance of records

Each of Gunns and FT must keep proper accounts and all other financial records expected of a prudent and competent person undertaking obligations similar to those of Gunns or FT as the case may be. In particular and without limitation, each of Gunns and FT must maintain accurate, complete and correct records of the costs associated with the replacement of any State Shortfall Quantity or Commonwealth Shortfall Quantity.

11.2 Availability of records

The State may request from Gunns, FT, or both, information, documents or material reasonably related to the Project or this agreement and, if it does so, Gunns or FT (as the case may be) must promptly provide that information, documents or material to the State.

11.3 Audit requirements

- (a) At any time up to six months after the end of this agreement, the State may (at its cost) require an audit of any financial statements, records or accounts in relation to the Project or this agreement to verify their accuracy, correctness and completeness.
- (b) If requested by the State, Gunns must make available for the audit, all relevant financial statements, records and accounts and, if

necessary, an appropriately trained and qualified member of its staff to provide accounting system information relevant for audit.

11.4 False information

- (a) If the State's audit shows that any of the statements, records or accounts are not accurate, complete and correct, then Gunns must rectify the problem and the cost of the audit will be for Gunns account.
- (b) If any inaccuracy has resulted in an overpayment to Gunns, an appropriate adjustment amount (as reasonably determined by the State) must be paid by Gunns on demand, or set off against subsequent payments to Gunns, at the State's option.

12 Assignment

No party may assign, transfer, novate, grant any security interests in respect of, or otherwise deal with all or any part of its rights, benefits or obligations under this agreement without the prior written consent of the other parties.

13 Confidentiality

13.1 Confidentiality

Subject to clause 13.2, Gunns must keep this agreement and all documents and information made available to it by the State or FT under, or in connection with, or in the course of the performance of, this agreement, confidential and must not disclose the same without the prior written consent of the other parties.

13.2 Exceptions to confidentiality

Clause 13.1 will not apply to the extent that:

- (a) the information is available to the public generally other than through a breach of this agreement;
- (b) the disclosure is required by law or by a government agency with jurisdiction to require the information, in which case Gunns will advise the State and FT in advance of the requirement being fulfilled;
- (c) the disclosure is made confidentially to the professional advisers of Gunns to obtain professional advice about this agreement or the Project; or
- (d) the disclosure is made confidentially to any bank or financial institution of Gunns for the purposes of seeking finance.

13.3 State may disclose contract provisions

Despite any confidentiality or intellectual property right subsisting in this agreement or a schedule, appendix, annexure or attachment to it, the State may publish all or any part of it, provided that the State notifies Gunns before it does so.

13.4 State and FT must not disclose Confidential Material

Subject to clause 13.3, each of the State and FT agrees that it must not publicly disclose, or use for a purpose other than this agreement, any information or material acquired from Gunns or produced by Gunns in connection with, or by performing, this agreement (“Confidential Material”), without Gunn’s prior written consent, except to the extent that:

- (a) the Confidential Material is available to the public generally, other than by breach of this agreement;
- (b) a law requires the State or FT to disclose, file, record or register something that includes Confidential Material;
- (c) disclosure is necessary or advisable to get a consent, authorisation, approval or licence from a governmental or public body or authority;
- (d) it is necessary to provide the information in answer to a question asked of a Minister in the Parliament or otherwise to comply with a Minister’s obligations to Parliament;
- (e) the Confidential Material is disclosed confidentially to professional advisers:
 - (i) to get professional advice about this agreement; or
 - (ii) to enforce this agreement; or
- (f) the disclosure is by the State and relates to the amount of compensation paid to Gunns under this agreement; or
- (g) the parties agree otherwise in writing.

14 Default/Termination

14.1 Conditions subsequent

If:

- (a) Pulp Mill Construction has not commenced by 30 June 2008;
- (b) after having commenced, Pulp Mill Construction ceases for a period of 6 months or longer;
- (c) the Pulp Mill has not been Commissioned such that the Commissioning Date has not occurred by 31 December 2010; or

- (d) after having commenced, Pulp Mill Operations cease for any reason for longer than 6 months,

then, in the case of any one or more of those events, Gunns must notify the State and FT as soon as possible and, whether or not such notice is provided, any party may terminate this agreement by giving written notice to the other parties of that termination, which will automatically take effect 6 months after the date of the notice.

14.2 Default

- (a) If Gunns or the State breaches a provision of this agreement, the party not in default (the “Non Defaulting Party”) may serve a Default Notice on the party in default (the “Defaulting Party”).
- (b) The Default Notice must:
 - (i) specify the details and nature of the breach;
 - (ii) if the breach is capable of rectification, require the Defaulting Party to rectify the breach by a date specified in the notice, which must not be less than one month from the date of the notice;
 - (iii) if the breach is not capable of rectification, specify the reasonable requirements of the Non Defaulting Party and the date by which those requirements must be complied with by the Defaulting Party, which must not be less than one month from the date of the notice.
- (c) If a breach has occurred as described under clause 14.2(a) and a Default Notice has been served in relation to that breach, and the breach is:
 - (i) capable of rectification and is not rectified to the Non Defaulting Party’s reasonable satisfaction by the date specified in the Default Notice; or
 - (ii) not capable of being rectified and the Defaulting Party has not complied with the reasonable requirements of the Non Defaulting Party as specified in the Default Notice by the date specified in the Default Notice,

then, the Non Defaulting Party may at any time terminate this agreement by giving notice to the other parties. The termination of this agreement by a party will be without prejudice to the accrued rights of that party at the time of such termination.

15 Dispute Resolution

15.1 General

If a Dispute arises, then a party must comply with this clause 15 before commencing court proceedings except where that party is seeking urgent interlocutory relief or another party has failed to comply with this clause.

15.2 Notification

A party desiring to progress the resolution of a Dispute must deliver to the other parties written detailed particulars of the party's claim in respect of the Dispute. A notice delivered under this clause 15.2 must be headed 'Notice of Dispute'.

15.3 Reply

A party who receives a Notice of Dispute must reply in writing to the other parties within 10 Business Days after receipt of the Notice of Dispute. A Reply delivered under this clause 15.3 must be headed 'Reply to Notice of Dispute'. The Reply:

- (a) may reject the whole, or any part, of the Notice of Dispute;
- (b) (if it rejects any part of the Notice of Dispute) must provide reasons for rejecting the whole or any part of the Notice of Dispute; and
- (c) may make a 'without prejudice' offer of settlement in relation to the Notice of Dispute.

15.4 Dispute

If a Dispute is not resolved or accepted within 10 Business Days of receipt of the Reply or the party serving the Notice of Dispute is dissatisfied with any part of the Reply, then unless it is withdrawn by the party delivering the Notice of Dispute, the Dispute:

- (a) may be dealt with under clause 15.7 if Gunns and the State agree; and
- (b) otherwise, must be dealt with under clause 15.5.

15.5 Management Meeting

- (a) Once the provisions of clauses 15.2 to 15.4 have been satisfied, the party delivering the Notice of Dispute must convene, and the other parties must attend, a without prejudice meeting ("**Management Meeting**") between a Deputy Secretary of the Department of Treasury and Finance of Tasmania or another person nominated by the State and a director or senior manager of each of Gunns or FT (or persons of equivalent office) with the objective of settling the Dispute.

- (b) The party delivering the Notice of Dispute must give written notice to the other parties of the time and place for the meeting within 10 Business Days of receipt of the Reply and the required representatives of each party must attend the Management Meeting.
- (c) The Management Meeting must commence no later than 20 Business Days after receipt of the Reply.
- (d) If the Dispute is not resolved within 20 Business Days after receipt of the Reply, then the Management Meeting is taken to have failed to resolve the Dispute.
- (e) The parties must procure that their representative at the Management Meeting has authority to negotiate and settle the Dispute and the representatives must negotiate in utmost good faith and use their best endeavours to resolve the Dispute.

15.6 CEO Meeting

- (a) If the Management Meeting fails to resolve the Dispute, then the party delivering the Notice of Dispute must convene, and the other parties must attend, a meeting (“**CEO Meeting**”) in Hobart between:
 - (i) the Secretary of the Department of Treasury and Finance of Tasmania or an equivalent senior government officer of the State, or that person’s nominee; and
 - (ii) the Managing Director (or person of equivalent office) of Gunns or the Managing Director’s nominee; and
 - (iii) the Managing Director (or person of equivalent office) of FT or the Managing Director’s nominee,

with the objective of settling the Dispute.
- (b) The party delivering the Notice of Dispute must give written notice to the other parties of the time and place for the CEO Meeting within 10 Business Days of the failure of the Management Meeting to resolve the Dispute.
- (c) The CEO Meeting must commence no later than 10 Business Days after the failure of the Management Meeting to resolve the Dispute.
- (d) If the Dispute is not resolved within 20 Business Days after the failure of the Management Meeting to resolve the Dispute, then the CEO Meeting is taken to have failed to resolve the Dispute.
- (e) The parties must procure that their representative at the CEO Meeting has authority to negotiate and settle the Dispute and the representatives must negotiate in utmost good faith and use their best endeavours to resolve the Dispute.

- (f) For the purpose of either or both the Management Meeting or the CEO Meeting, any of the State, Gunns or FT (or jointly by agreement, at shared cost) may commission a report on the matters the subject of the Dispute from an independent expert. The report will not be binding, but may be relied upon by the party commissioning the report.

15.7 Independent expert ruling

- (a) This clause 15.7 applies if this agreement specifies a dispute may be resolved by an independent expert ruling.
- (b) The parties must endeavour to agree on an independent expert within 10 Business Days of the Reply. If the parties are unable to agree on an independent expert, then either party may request the President (or person of an equivalent position) of the Law Council of Australia, or any body which is a successor or equivalent of it, to appoint a suitably qualified person to act as independent expert and the parties may make written submissions to that person on the choice of independent expert.
- (c) The independent expert appointed under this clause 15.7 must:
 - (i) be qualified by their education, experience and training to determine the issues in dispute; and
 - (ii) not have any relationship or association with any party or their Related Bodies Corporate or any Regulatory Agency which may affect their impartiality.
- (d) A party is entitled to make written submissions to the independent expert including the provision of expert reports. Otherwise, the independent expert may decide the procedures for deciding the dispute in their absolute discretion including requiring the parties to provide any material in their possession or control which is reasonably relevant to the issues in dispute.
- (e) The independent expert will determine the dispute as an expert and not an arbitrator.
- (f) Each party will bear their own costs in relation to the dispute. The independent expert must decide the proportions in which the parties will bear the costs of the independent expert having regard to the extent to which the parties have acted unreasonably or been at fault.
- (g) The independent expert's ruling is conclusive and binding on the parties in the absence of manifest error. Subject to the terms of this agreement (including, to avoid doubt, clause 6), the determination may include the requirement for one party to pay compensation to another party (including interest) and directions as to the future performance of a party.

15.8 Continuing performance

Despite the parties being in dispute or taking steps to comply with this clause 15, the parties must continue to perform their obligations under this agreement in a timely manner.

15.9 Survival

This clause 15 survives termination or expiry of this agreement.

16 Notices

16.1 Form

Unless expressly stated otherwise in this agreement, all notices, certificates, requests consents, approvals, waivers and other communications in connection with this agreement must be in writing signed by the State, Gunns or FT (as the case may be) or their authorised representative and must be marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the last way notified.

16.2 Delivery

Notices must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;
- (c) sent by fax to the fax number set out or referred to in the Details; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

16.3 When effective

- (a) Notices take effect from the time they are received unless a later time is specified.
- (b) If sent by post, notices are taken to have been received three days after posting.
- (c) If sent by fax, notices are taken to have been received at the time shown in the transmission report as the time that the whole fax was sent.

17 Governing law and jurisdiction

17.1 Law of Tasmania

The law of Tasmania governs this agreement, and the parties submit to the jurisdiction of the Courts of Tasmania.

17.2 Proceedings issued under or about this agreement

Any proceedings issued under, or about, this agreement, must be instituted either:

- (a) in a Tasmanian court; or
- (b) in the Federal Court, from the Tasmanian Registry of that court.

18 General

18.1 GST

- (a) Unless expressly stated otherwise, all fees or other sums payable or any other consideration provided, or to be provided, under or in connection with this agreement, are GST exclusive.
- (b) Unless expressly stated otherwise, a party (“**Supplier**”) making a taxable supply under or in connection with this agreement, may recover from the party (“**Recipient**”) to whom the taxable supply is made, an additional amount of GST calculated by multiplying the value of the consideration payable or to be provided for the supply (without any deduction or set-off) by the prevailing GST rate (“**Additional Amount**”).
- (c) The Additional Amount must be paid at the time when payment of the consideration for the taxable supply is due if the consideration is monetary, and within 14 days after the supplier provides a tax invoice to the Recipient if the consideration is non-monetary.
- (d) The Supplier will provide a tax invoice to the Recipient for any taxable supply made under or in connection with this agreement.
- (e) If the amount of GST recovered by the Supplier from the Recipient differs from the amount of GST payable at law by the Supplier in respect of the supply, the amount payable by the Recipient to the Supplier will be adjusted accordingly.
- (f) If, under the terms of this agreement, one party is required to indemnify another, then the amount by which the indemnifying party indemnifies the other party (“**the indemnity amount**”) does not include any amount for which the indemnified party has claimed, or is entitled to claim, an input tax credit. However, to the extent that the receipt of any indemnity amount renders the recipient of that payment liable to pay GST, clause 18.1(a) to (e)

will apply to the supply in respect of which the indemnity amount is paid.

- (g) Terms and expressions used in this clause, which are defined in the GST Act, have the same meaning given to those terms and expressions in that Act.
- (h) “GST” means the tax imposed by the GST Act and the related imposition Acts of the Commonwealth.
- (i) “GST Act” means the *A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)* including all amendments made to the Act and any other regulations and other instruments made under the Act.

18.2 Set-off

The State may set off any amount due for payment by it against any amount due for payment by Gunns under this agreement.

18.3 No partnership or agency

Except as expressly provided in this agreement nothing contained or implied in this agreement will:

- (a) constitute, or be taken to constitute, a party to be the partner, agent or legal representative of any other party for any purpose whatsoever or create or be taken to create any partnership; or
- (b) create or be taken to create any agency or trust.

18.4 Variation

A provision of this agreement may not be varied except in writing, signed by the party or parties to be bound.

18.5 Approvals and consent

A party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this agreement expressly provides otherwise. By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

18.6 Entire agreement

This agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

18.7 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.

18.8 Counterparts

This agreement may be executed in any number of counterparts. All counterparts will be taken to constitute one agreement. The parties agree that if necessary, they may exchange faxed copies of counterparts, and those faxed copies will be taken to constitute one agreement. The parties must exchange originals as soon as possible afterwards.

Executed as an agreement.

Signing page

Dated: [11 January 2008]

Signed for The Crown in Right of Tasmania by Michael Anthony Aird being and as the Treasurer for the State of Tasmania in the presence of:)
)
)
)
) [Hon Michael Aird]

[D W Challen]
Signature of witness

.....
Name of witness (block letters)

.....
Address of witness

.....
Occupation

The Common Seal of Gunns Limited (ACN 009 478 148) fixed in the presence of:)
)
)

[Wayne Chapman]
Director/Secretary

.....
Name of Director/Secretary

[John E Gay]

.....
Director

.....
Name of Director

The Common Seal of Forestry Tasmania fixed in the presence of:)
)
)

[Robert L Gordon]
Managing Director