

VARIATION AGREEMENT

THIS AGREEMENT is made the ^{12th} 27th day of August 2020.

1. PARTIES

- 1.1 **THE FORESTRY CORPORATION OF NEW SOUTH WALES** a statutory State owned corporation constituted by the Forestry Act 2012 ('FCNSW')
- 1.2 **O'Briens Sawmill PTY LTD ABN:68 368 277 042** ('the Company')

2 RECITALS

- 2.1 The parties are parties to a Western Region Red Gum Wood Supply Agreement State Forests – Early Thinning & Integrated Residue that commenced on 1 July 2019 (the "Wood Supply Agreement") providing for an annual supply of timber until 30 June 2024.
- 2.2 The parties have reached agreement upon amendments to the Wood Supply Agreement to include an additional allocation from Western Land Leases, and Stumpage price as well as truck safety improvements for the Western Land Lease Allocation. This Agreement gives effect to those amendments.

3. AMENDMENTS

The Wood Supply Agreement is amended from the date of this Agreement by:

- (a) Inserting in clause 2.1 in alphabetical order the following definitions:

'Early Thinning and Integrated Residue Allocation' means that part of the Allocation described in **Item 6 of Schedule 1 paragraphs (a) to (d)** being the Early Thinning and Integrated Residue Allocation;

'Quarterly Allocation' for an Allocation for a Quarter means the quantity listed in Item 7 of Schedule 1 for the Quarter for that Allocation.

'Western Land Lease Allocation' means that quantity of Timber described in **Item 6 of Schedule 1 paragraph (e)** as being the Western Land Lease Allocation;

'Western Land Lease' means land held under a lease granted or issued under the Western Lands Act 1901;

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- (b) Deleting the definition of '**Allocation**' in clause 2.1 and inserting instead:
'**Allocation**' means the Early Thinning and Integrated Residue Allocation or the Western Land Lease Allocation as the case may be;
- (c) Deleting the definition of '**Priority Area of Supply**' in clause 2.1 and inserting instead:
'**Priority Area of Supply**' means
- a) Koondrook, Perricoota and Campbells Island State Forest for the Early Thinning and Integrated Residue Allocation and
 - b) Western Lands Leases within the Area of Supply, specifically, but not limited to, Balranald and Euston areas for the Western Lands Lease Allocation.
- (d) Deleting the definition of '**Force Majeure**' **part (c)** in clause 2.1 and inserting instead:
- (c) actions by third parties, including the state government of NSW and lessees that restrict the ability of FCNSW to make Harvesting Units available to the Company in the Priority Area of Supply;
- (e) Deleting clauses 5.1, 5.2 and 5.3 and inserting instead:
- 5.1 Each Year FCNSW must use reasonable endeavours to make available 100% of each of the Early Thinning and Integrated Residue Allocation and the Western Land Lease Allocation to the Company or such greater or lesser quantity that the Company requests and is entitled to be supplied under this Agreement in accordance with and subject to **clauses 5.2 and 5.3**.
- 5.2 Subject to **clause 5.3** in any one or more Years of the Term the Company may by not less than 3 months written notice prior to the commencement of the relevant Year, require FCNSW make available in the Year a quantity of Timber up to 20% of either or both of the Early Thinning and Integrated Residue Allocation and the Western Land Lease Allocation, in addition to either or both of those Allocations.
- 5.3 Nothing in this agreement entitles the Company to, or requires FCNSW to make available to the Company, over the Term;
- a) A quantity of Timber from Early Thinnings and Integrated Residue operations that exceeds 500% of

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- the Early Thinning and Integrated Residue Allocation; or
- b) A quantity of Timber from Western Lands Leases that exceeds 400% of the Western Land Lease Allocation.
- (f) Deleting clauses 6.1, 6.2, 6.3, and 6.4 and inserting instead:
- 6.1 If for reasons other than Force Majeure, or the default of FCNSW, the Company fails in any Quarter to take at least 80% of the Quarterly Allocation for an Allocation the Company must pay FCNSW, within 30 days of FCNSW's written demand, the sum of money equal to the difference between the price that would have been payable had the Company taken 80% of the Quarterly Allocation for that Allocation and the price paid or payable for the quantity of Timber actually taken by the Company in the Quarter in relation to that Allocation. Any sum payable by the Company under this clause is payable as pre estimated and liquidated damages and not as a penalty.
- 6.2 If in the Quarter in which the Company makes a payment under clause 6.1 in relation to an Allocation the Company takes a quantity of Timber in excess of 80% of the Quarterly Allocation for that Allocation ("excess Timber"), the amount payable by the Company for the Stumpage Price component for the excess Timber will be reduced by the amount of the Stumpage Price component of any sum paid under clause 6.1. The amount of any reduction allowed must not exceed the sum that would have otherwise been payable for the Stumpage Price component of the excess Timber.
- 6.3 If for reasons other than Force Majeure or the default of FCNSW the Company:
- 6.3.1 takes less than 80 per cent of an Allocation for two consecutive Years during the Term; or
- 6.3.2 takes less than 70 per cent of an Allocation in any Year,
- FCNSW may terminate this Agreement under the provisions of clause 27.
- 6.4 If in a Year for reasons other than Force Majeure or the default of FCNSW, the Company takes less than 80 per cent of an Allocation FCNSW may, after consultation with the Company and by notice in writing to the Company given no later than 3 months after the end of the Year, amend the Allocation by reducing it to a quantity not less than the quantity of the Allocation taken by the Company during the Year.

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- (g) Inserting after clause 7.2 clauses 7.3 and 7.4 as follows:
- 7.3 The Company may only take the Western Land Lease Allocation from Western Land Leases.
- 7.4 The parties acknowledge that from time to time the Company will be required to temporarily cease Harvesting Operations in or move from a Harvesting Unit on Western Land Leases to facilitate the reasonable request by lessees to carry out land management functions that are not compatible with Harvesting Operations for a period of time.
- (h) Deleting clause 10.2 and inserting instead:
- 10.2 FCNSW will provide road access to Compartments. It is the Company's responsibility to provide road access to Log Landings in the State forest areas. It is the Company's responsibility to construct and maintain road access for Harvesting Operations on Western Land Leases.
- (i) Deleting in clauses 24.1.1 and 25.2 "the Allocation" and inserting instead "both the Early Thinning and Integrated Residue Allocation and the Western Land Lease Allocation"
- (j) Deleting the text in Item 5 in schedule 1 and inserting instead:
- Stumpage Price
1. Early Thinning and Integrated Residue Allocation from 1 July 2020 (and despite any provision of clause 16)
 2. Western Land Lease Allocation (ex GST)
- (k) Inserting text in Item 6:
- (c) Western Land Lease Allocation 10,000 tonnes (commencing 1 July 2020)
- (l) Inserting after clause 1.2 to Schedule 4 the following clauses 1.3 and 1.4:
- 1.3 Prior to the commencement of operations on Western Land Leases, the Company must install front and rear gates and Self Tensioning Load Binders (STLB) to 100% of its haulage fleet used to haul timber from Western Land Leases under this Agreement.

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- 1.4 The Company must install Electronic Braking System (EBS) to 100% of its haulage fleet used to haul timber from Western Land Leases under this Agreement by 31 December 2020.

EXECUTED AS A DEED

EXECUTED for and on behalf of
THE FORESTRY CORPORATION
OF NEW SOUTH WALES
by its delegate

Daniel Tuan

in the presence of:

[Signature]

Witness

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[Signature]

Delegate

EXECUTED by
O'BRIENS SAWMILL
PTY LIMITED by [two directors] or
[a director and its secretary] or
[its sole director]

* [Signature]

Secretary/Director

)
)
)
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Director

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[Signature]

**WESTERN REGION
RED GUM
WOOD SUPPLY AGREEMENT
(State Forests – Early Thinning & Integrated Residue)**

BETWEEN

THE FORESTRY CORPORATION OF NSW

AND

OBRIENS SAWMILL PTY LTD

for

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WESTERN REGION RED GUM WOOD SUPPLY AGREEMENT
(Koondrook, Perricoota and Campbells Island State Forests - Residue)

1. DATE OF AND PARTIES TO AGREEMENT

THIS AGREEMENT is made on the date specified in **Schedule 1 Item 1** to this Agreement between **THE FORESTRY CORPORATION OF NEW SOUTH WALES** ("FCNSW"), a statutory State owned corporation constituted under the Forestry Act 2012 (NSW) and the **COMPANY** whose details appear in **Item 2 Schedule 1** ("the Company").

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement unless a contrary intention appears:

'Act' means the Forestry Act 2012 (NSW) and all regulations made under that Act.

'Allocation' for a Year means the volume of Timber set out as the Allocation in **Item 6 of Schedule 1** for that Year;

'Area of Supply' means the Crown-timber lands within the area defined as the Riverina Area in the NATIONAL PARK ESTATE (RIVERINA RED GUM RESERVATIONS) ACT 2010;

'Authorised Person' means any person authorised by FCNSW to perform the function which is, in the context, to be performed by an Authorised Person;

'Change in Control' of a corporation means change in control of more than 50% of the shares with the right to vote in general meetings of the corporation;

'Code of Procedure' means the Code of Procedure attached as **Schedule 3** as may be amended from time to time in accordance with this Agreement;

'Codes' means the Code of Procedure and the Forest Practices Code;

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

'Company' means the Company and includes all employees, servants and agents of the Company;

'Compartment' means an identified geographic administrative area from which FCNSW may make Timber available to the Company;

'Condition Precedent' means the amendment of the IFOA to in effect:

- (i) extend for at least 5 years from 1 July 2019 the program for Early Thinnings operations that is presently provided at the date of this Agreement by clause 5(4a) of the IFOA;
- (ii) allow for an annual quantity of at least 24,500 tonnes of river gum residue to be produced from those operations under the extended program.

'CPI' means the consumer price index published by the Australian Bureau of Statistics for the Housing Group Index, Sub Group Utilities-Gas and other Household fuels Melbourne;

'Early Thinning' means a harvesting operation in a stand within a compartment where thinning silviculture is applied and the trees to be removed are generally under 50cm dbhob, however some of the trees may be over 50cm dbhob.

'Equipment' means the machinery, vehicles and plant used for by the Company for Harvesting Operations.

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‘Expiry Date’ means the date specified in **Item 4 of Schedule 1**

‘Force Majeure’ means

- (a) 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 (other than FCNSW) whether or not the basis for the act or omission existed at the date of this Agreement, war, sabotage, riot, civil disobedience, epidemic, disease, fire, explosion, failure of power supply, accident, natural disaster, flooding whether by artificial watering or otherwise, 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; and
- (b) restrictions imposed by FCNSW on the taking of timber in the Area of Supply on the grounds that environmental factors are having an adverse effect on tree health impacting on the long sustainable timber yield capacity of the Area of Supply; and
- (c) actions by third parties, including the state government of NSW that restrict the ability of FCNSW to make Harvesting Units available to the Company in the Priority Area of Supply;

‘Forest Practices Code’ means the FCNSW publication Forest Practices Code applying to all timber harvesting operations conducted in all native forest under the control of FCNSW and includes the FCNSW Code of Practice for Safety in Forest Harvesting operations;

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

‘Harvesting Operations’ means the selection and felling of trees, servicing of trees into log products, extraction of log products to Log Landings, debarking, segregation and stockpiling of log products at the Log Landing, and ancillary works including roading, tracking, Log Landing construction, site rehabilitation and the moving of harvesting equipment between Harvesting Units, the loading of log products onto vehicles at the Log Landing and the haulage of log products from the Area of Supply;

‘Harvesting Plan’ means an operational plan for harvesting Timber from a specified Compartment or Compartments prepared by FCNSW;

‘Harvesting Rate’ has the meaning given to that expression by **clause 3 of Schedule 5**;

‘Harvesting Unit’ means an area of land comprising a Compartment or Compartments identified by FCNSW as a Harvesting Unit;

‘IFOA’ means the integrated forestry operations approval for Riverina Red Gum that commenced 11 January 2011.

‘IFOA ET Quantity’ means the maximum average annual quantity that may be produced in accordance with the IFOA from Early Thinning operations that are referred to in the definition of Condition Precedent during the Term.

‘IFOA IR Quantity’ means the average annual quantity that may be produced in accordance with the IFOA from Integrated Residue operations under clause 5(3)(b) of the IFOA following the review of that quantity in accordance with clause 26(2)(e) of the IFOA.

‘Integrated Residue’ means residue grade Logs from operations that harvest trees primarily for the purpose of producing high quality logs.

‘Log Landing’ means an area where log products are processed and assembled prior to loading onto a truck.

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Operator Tree Selection means the selection by the Company of the trees to fell and/or retain in the course of Harvesting Operations in accordance with the conditions specified in the Harvesting Plan or as otherwise directed by FCNSW

'Other Agreement Holders' means parties who hold supply agreements with FCNSW for the supply of Other Log Products out of the Area of Supply.

'Other Log Products' means all types of timber products, specified in the FCNSW's Red Gum Grading Manual 2004 as amended from time to time.

Processing means the turning of logs into other marketable products.

'Priority Area of Supply' means Koondrook, Perricoota and Campbells Island State forests

'Quarter' means a period of three months commencing 1 January, 1 April, 1 July and 1 October.

'Quarterly Allocation' for a Quarter means the quantity listed in Item 7 of Schedule 1 for the Quarter.

'RCAN' means a recipient created Adjustment Note with the same meaning as in Australian Taxation Office ruling GSTR 2000/1 or any rulings that replace it.

'RCTI' means a recipient created tax invoice with the same meaning as in the GST Act.

'Specifications' means the specifications for the timber set out in **Schedule 2** as amended in accordance with this Agreement;

'Stumpage Price' means the amount per tonne of Timber charged by FCNSW for the Timber;

'Term' means the duration of this Agreement;

'Timber' means the timber detailed in the Specifications;

'Tonnes' means green metric tonnes;

'Year' means a period of twelve months commencing on 1 July in any year.

2.2 In this Agreement, unless the context requires otherwise:

- 2.2.1 a reference to the Act includes all amendments, regulations, rules, by-laws and proclamations under the Act;
- 2.2.2 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;
- 2.2.3 headings are for convenience only and do not affect the interpretation of this Agreement;
- 2.2.4 words importing the singular include the plural and vice versa;
- 2.2.5 words importing a gender include any gender;
- 2.2.6 a reference to a person includes a company, partnership, joint venture, association, corporation or other body corporate and any governmental agency;

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- 2.2.7 a reference to anything includes a part of that thing;
- 2.2.8 a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of and a party, annexure, exhibit and schedule to this Agreement;
- 2.2.9 a reference to a document includes all amendments or supplements or replacements or novations of that document;
- 2.2.10 a reference to a party to a document includes that party's successors and permitted assigns;
- 2.2.11 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;
- 2.2.12 a reference to dollars or \$ is a reference to the lawful currency of the Commonwealth of Australia.
- 2.2.13 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.
- 2.2.14 a reference to FCNSW making Timber available is a reference to making Timber available by the method described in **clause 8.1**;
- 2.2.15 a reference to the Company taking Timber is a reference to taking Timber under a licence issued to the Company under the Act.

3. SCOPE OF AGREEMENT

- 3.1 The Company carries on the business of Timber processing and sales and requires supplies of Timber to conduct its business.
- 3.2 From the Commencement Date FCNSW will make available supplies of Timber to the Company and the Company must take or accept and pay for the supplies of Timber made available by FCNSW upon the terms and conditions set out in this Agreement.
- 3.3 The Company must pay FCNSW the Stumpage Price for Timber.
- 3.4 The Company must conduct Harvesting Operations in relation to Other Log Products and if it does so as the contractor for FCNSW, FCNSW must pay the Company the Harvesting Rates for that work.

4. DURATION OF AGREEMENT

- 4.1 The Agreement shall operate from the date of this Agreement until the Expiry Date unless terminated sooner as provided in this Agreement.
- 4.2 If the Condition Precedent is not satisfied by the Commencement Date either party may terminate this Agreement by notice in writing to the other.

5. ALLOCATION

- 5.1 Each Year FCNSW must use reasonable endeavours to make available 100% of the Allocation to the Company or such lesser quantity that the Company requests.

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- 5.2 Subject to **clause 5.3** in any one or more of the Years of the Term the Company may by not less than 3 months written notice prior to the commencement of the relevant Year, require FCNSW make available in the Year a quantity of Timber up to 20% of the Allocation, in addition to the Allocation.
- 5.3 Nothing in this Agreement entitles the Company to, or requires FCNSW to make available to the Company, a quantity of Timber over the Term that exceeds 500% of the Allocation.
- 5.4 FCNSW must use reasonable endeavours to make the Timber available from within the Priority Area of Supply
- 5.5 Despite any provision of this Agreement FCNSW is not obliged to make the Timber available from outside the Area of Supply.
- 5.6 No claim can be made by the Company against FCNSW respecting the actual quantity made available if FCNSW complied with clause 5.1.

6. SHORTFALL

- 6.1 If for reasons other than Force Majeure, or the default of FCNSW, the Company fails in any Quarter to take at least 80% of the Quarterly Allocation the Company must pay FCNSW, within 30 days of FCNSW's written demand, the sum of money equal to the difference between the price that would have been payable had the Company taken 80% of the Quarterly Allocation and the price paid or payable for the quantity of Timber actually taken by the Company in the Quarter. Any sum payable by the Company under this clause is payable as pre-estimated and liquidated damages and not as a penalty.
- 6.2 If in the Quarter in which the Company makes a payment under **clause 6.1** the Company takes a quantity of Timber in excess of 80% of the Quarterly Allocation ("excess Timber"), the amount payable by the Company for the Stumpage Price component for the excess Timber will be reduced by the amount of the Stumpage Price component of any sum paid under **clause 6.1**. The amount of any reduction allowed must not exceed the sum that would have otherwise been payable for the Stumpage Price component of the excess Timber.
- 6.3 If for reasons other than Force Majeure or the default of FCNSW the Company:
- 6.3.1 takes less than 80 per cent of the Allocation for two consecutive Years during the Term;
or
- 6.3.2 takes less than 70 per cent of the Allocation in any Year,

FCNSW may terminate this Agreement under the provisions of **clause 27**.

- 6.4 If in a Year for reasons other than Force Majeure or the default of FCNSW, the Company takes less than 80 per cent of the Allocation FCNSW may, after consultation with the Company and by notice in writing to the Company given no later than 3 months after the end of the Year, amend the Allocation by reducing it to a quantity not less than the quantity of the Allocation taken by the Company during the Year.

7. METHOD OF SUPPLY

- 7.1 FCNSW will make Timber available to the Company by issuing licences under the Act enabling the Company or its agent to take Timber by undertaking Harvesting Operations.

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- 7.2 In undertaking Harvesting Operations the Company must at all times comply with the provisions detailed in **Schedule 4**.

8. OTHER LOG PRODUCTS

- 8.1 During the course of conducting Harvesting Operations to take Timber under this Agreement the Company must also produce the Other Log Product as directed by FCNSW.
- 8.2 The Company must use its reasonable endeavours to reach agreement with the Other Agreement Holder to whom Other Log Products are being supplied being an agreement under which the Company acts as the contractor for the Other Agreement Holder in relation to the Harvesting Operations involved in harvesting the Other Log Products and loading them onto the Other Agreement Holders haulage vehicles at agreed rates and otherwise on such terms as the parties see fit ("an OLP Contract Harvesting Agreement").
- 8.3 If an OLP Contract Harvesting Agreement cannot be reached or if **clause 8.4** applies, an agreement shall come into effect between the Company and FCNSW under which the Company conducts the Harvesting Operations involved in producing Other Log Products and loading them onto Other Agreement Holders haulage vehicles as the contractor for FCNSW. In such a case **Schedule 5** applies.
- 8.4 Despite **clause 8.2** FCNSW may at its discretion instruct the Company not to negotiate an OLP Contract Harvesting Agreement.
- 8.5 The Company must maximise the value of all Other Log Products produced by measuring, marking, servicing and grading all logs in accordance with the FCNSW publication Red Gum Grading Manual (2004), unless otherwise directed in writing by FCNSW.

9. HARVESTING PLANS

- 9.1 FCNSW will prepare and issue to the Company Harvesting Plans for the conduct of Harvesting Operations. Where practicable, FCNSW will consult with the Company during the preparation of each Harvesting Plan.
- 9.2 FCNSW will use all reasonable endeavours to ensure that Harvesting Plans are prepared in a timely fashion to facilitate the continuity of the Company's Harvesting Operations.
- 9.3 The Company must comply with the conditions specified within the Harvesting Plan including all relevant legislation referenced therein.
- 9.4 The Company must not conduct Harvesting Operations except in accordance with a Harvesting Plan issued by FCNSW.
- 9.5 The Company acknowledges that during the Term:
- 9.5.1 FCNSW will require the Company to record the movement of tree felling equipment used in Harvesting Operations.
- 9.5.2 The Company will be required to:
- (a) record and store GPS data of the movements of tree felling equipment within each Harvesting Unit for at least 12 months, or other period as reasonably specified by FCNSW, after completion of Harvesting Operations in a Harvesting Unit;
 - (b) produce that data when requested by FCNSW; and

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- (c) acquire and use GPS equipment that is capable of performing those functions at its own cost.

- 9.6 The Company shall at the request of FCNSW carry out Operator Tree Selection and/or harvest boundary location in the Harvesting Units it conducts its Harvesting Operations in under this Agreement at its own cost and expense including without limitation costs and expenses associated with:
 - 9.6.1 acquisition and maintenance of all necessary equipment; and
 - 9.6.2 making available employees for training by FCNSW and otherwise fully cooperating with FCNSW in the process of preparing the Company to conduct Operator Tree Selection.
- 9.7 If requested by FCNSW, the Company must truly and correctly complete and provide to FCNSW any audit checklist supplied by FCNSW regarding the Company's compliance with prescriptions specified in the relevant Harvesting Plan and the Codes.
- 9.8 Each Year of the Term the Company must, without charge to FCNSW, make its grader with operator available for up to 200 hours for grading operations on roads, tracks and trails within the Priority Area of Supply at locations agreed between the parties or in default of agreement at locations specified by FCNSW.

10. EXTRACTION, PRODUCT SEGREGATION AND STOCKPILING

- 10.1 The Company must use its best endeavours to ensure that Timber and Other Log Products are removed from the Harvesting Unit within 7 days of felling.
- 10.2 FCNSW will provide road access to Compartments. It is the Company's responsibility to provide road access to Log Landings.
- 10.3 Each Year the company must, without charge to FCNSW, supply and deliver 100 tonnes of 40mm filtered Aggregate to be used primarily in drainage line crossings in the Priority Area of Supply at locations agreed between both parties, or in default of agreement at locations specified by FCNSW.
- 10.4 Each Year the Company must, without charge to FCNSW supply and deliver 300 tonnes of road surface gravel (class 4 Fine Crushed rock 40mm) to be used primarily on roads, tracks and trails within the Priority Area of Supply at locations agreed between the parties or in default of agreement at locations specified by FCNSW.
- 10.5 The Company must, if requested by an Authorised Person, dismantle a log stockpile at the Log Landing so as to make logs accessible for inspection.
- 10.6 The Company must, if requested by FCNSW, participate at the Company's cost in log segregation exercises and audits.
- 10.7 If in FCNSW's reasonable opinion the Company has not complied with clause 10.1 FCNSW may restrict the progress of Harvesting Operations through the Harvesting Unit until the Company has complied with clause 10.1.

11. COMPLIANCE

- 11.1 The Company must comply with:

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- 11.1.1 The Act and all other applicable statutes and subordinate legislation in particular:
- (a) The Work Health and Safety Act 2011, Work Health and Safety Regulations 2011, any relevant Codes of Practice and Australian/International Standards;
 - (b) Heavy Vehicle National Law (NSW), Heavy Vehicle National Regulations (NSW), Heavy Vehicle (Mass Dimension and Loading) Regulation (NSW) NSW Road Transport Act 2013 and the Road Transport (Vehicle Registration) Regulation 2007 particularly in relation to roadworthy requirements, gross combination mass, chain of responsibility, vehicle permits and registrations;
- 11.1.2 The requirements of anybody lawfully having authority in relation to the subject matter of this Agreement;
- 11.1.3 The Codes;
- 11.1.4 Any relevant Plan of Operations or Harvesting Plan;
- 11.1.5 The conditions attached to any license issued to the Company under the Act or other license or permit issued to the Company by a government authority;
- 11.1.6 Any lawful direction given to the Company by an Authorised Person.
- 11.2 The Company must ensure that their respective agents, contractors or other persons under their respective control or direction comply with **clause 11.1**.
- 11.3 The Company must provide evidence of compliance with this **clause 11** if requested to do so by FCNSW.

12. TITLE AND RISK

- 12.1 Ownership of the Timber taken by the Company will pass to the Company on payment for the Timber.
- 12.2 The risks of ownership of the Timber will pass to the Company when the Company takes delivery of it.
- 12.3 The Company will be deemed to have taken delivery of Timber when the Timber has been loaded onto a vehicle to be delivered to the Company by the Company or a person engaged by the Company.

13. SPECIFICATIONS

- 13.1 FCNSW must make available and the Company must take any Timber which conforms with the Specifications and is within other requirements of this Agreement.
- 13.2 Timber will be deemed to conform to the Specifications if the Company takes delivery of it.
- 13.3 If quantities of Timber which conform to the Specification, and which the Company is entitled to under this Agreement in the Year, are not available in the Year as a consequence of Force Majeure or in breach of this Agreement:
- 13.3.1 the Company and FCNSW must within a reasonable period of time confer with a view to exploring the possibility of the Company accepting timber from categories of logs which are not within the Specifications, in replacement of the quantities of Timber that are not

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available. FCNSW must give written notice to the Company as soon as practicable and in any event within 28 days of becoming aware of a likely shortage and will in the same notice provide an opportunity for the Company to meet with FCNSW and provide particulars of:

- (a) the extent and consequences of the shortage;
- (b) details of other timber which FCNSW can supply by way of replacement timber ("Replacement Timber"); and
- (c) the terms and conditions (including price) on which FCNSW would supply, or make available such Replacement Timber; and

13.3.2 The Company will not be entitled to invoke the provisions of **clause 27.6.1** or to claim any damages for breach against FCNSW unless both parties have in good faith made all reasonable endeavours to meet the Company's needs for Timber from Replacement Timber available from FCNSW but outside the scope of the Specifications.

- 13.4 Replacement Timber supplied to the Company under the provisions of **clause 13.3** will be deemed to be Timber supplied under this Agreement.
- 13.5 At the request of the Company, FCNSW must consult with the Company with respect to the terms and conditions (including price) upon which FCNSW is prepared to supply or make available Replacement Timber.
- 13.6 The Company has no obligation to accept Replacement Timber on the terms proposed or at all.

14. DETERMINATION OF QUANTITY OF TIMBER

- 14.1 The method of determination of the quantity of Timber upon which the price is payable under this Agreement will be as set out in the Code of Procedure. The Code of Procedure may be amended by FCNSW from time to time as may be considered necessary by FCNSW, acting reasonably. FCNSW will consult with and take into account any comments of the Company before any amendments are effected or implemented.
- 14.2 The Company must ensure appropriate access to a weighbridge or other measuring device approved by FCNSW that will enable the Timber taken by the Company or delivered to the Company to be weighed. The Company must maintain and verify the weighbridge or other device as required by the manufacturer's specifications.
- 14.3 FCNSW may from time to time undertake an independent verification of the operation and accuracy of the weighbridge or other device used in the measurement of Timber upon which the price is payable under this Agreement.
- 14.4 If there is any inconsistency between the Code of Procedure and this Agreement, the provisions of this Agreement shall prevail.
- 14.5 If requested by FCNSW the company must supply and make available at the companies cost, electronic devices capable of running an electronic delivery docket system supplied by FCNSW, minimum requirements are IOS 9 for Apple devices or Android 4.4 for other devices.

15. PRICE

- 15.1 The price payable for the Timber shall be the Stumpage Price for the Timber.

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16. STUMPAGE PRICE

- 16.1 The Stumpage Prices payable on the Commencement Date are the prices set out in **Item 5 of Schedule 1**.
- 16.2 Subject to **clause 16.3** the Stumpage Price for each Year thereafter shall be the Stumpage Price for the previous Year varied in the same proportion as the variation if any in the CPI. In calculating the variation the CPI figures used shall be the figures last published prior to commencement of the previous Year and the figures last published before the end of the previous Year.
- 16.3 Any variation to Stumpage Prices will be limited to plus or minus 5% in any one Year should the variation in the CPI be greater than plus or minus 5%.
- 16.4 Stumpage Price so calculated shall be applied retrospectively to the commencement of the Year. Any money due to a party as a result of the retrospective application of Stumpage Price must be paid within one month of the claim for the adjustment being made.
- 16.5 FCNSW must advise the Company in writing of any variation to Stumpage Price as soon as practicable after the variation is calculated.

17. PAYMENT

- 17.1 FCNSW will issue monthly invoices for Timber taken by the Company during the previous month.
- 17.2 The Company must pay any invoice issued to it prior to the expiration of 14 days after the date of its issue, or the expiration of the calendar month within which it was issued, whichever last occurs. The Company is liable to pay an invoice issued to it and any interest accrued on that invoice as a debt due and payable to FCNSW.
- 17.3 If the Company fails to pay an invoice within the time for payment of that invoice:
- 17.3.1 FCNSW may give written notice to the Company of its intention to suspend the Company's right to take Timber if payment is not made within 7 days after the date of the notice; and
- 17.3.2 FCNSW may suspend the Company's right to take Timber under this Agreement if the invoice is not paid within the 7 day period.

18. GOODS AND SERVICES TAX

- 18.1 The Stumpage Prices and any other consideration for supplies specified in this Agreement do not, subject to the operation of this clause, include any amount in respect of GST unless provided otherwise.
- 18.2 The GST may be imposed on the Stumpage Prices and the Harvesting Rate.
- 18.3 If GST is or will be imposed on a supply made under this Agreement, the supplier may:
- 18.3.1 increase the consideration otherwise provided for that supply under this Agreement by the amount of that GST; or
- 18.3.2 otherwise recover from the recipient the amount of that GST.
- 18.4 The supplier must ensure that any invoice issued under this agreement in respect of a taxable supply is a Tax Invoice or Adjustment Note as appropriate or, if no invoice is to be otherwise issued under this Agreement, must issue a Tax Invoice or Adjustment Note as appropriate within 7 days of GST

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being imposed on a taxable supply made under this Agreement. Notwithstanding any other provision of this Agreement the payment of any amount by the recipient in respect of a taxable supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.

- 18.5 Costs required to be reimbursed or indemnified under this Agreement must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit provided that the reimbursement or indemnification does not amount to consideration for a taxable supply.
- 18.6 If the consideration for a supply under this Agreement is calculated by reference to the consideration or value of other supplies, in performing that calculation, the consideration or value for those other supplies excludes any amount in respect of GST payable on those supplies.
- 18.7 FCNSW shall raise RCTI's in respect of all Harvest Rate payments made to the Company, and RCAN's in respect of all adjustments to those payments, and the Company shall not raise Tax Invoices or Adjustment Notes in relation to the supplies made under this Agreement. In addition:
 - 18.7.1 copies of these RCTI's and RCAN's will be sent by FCNSW to the Company with the payment or adjustment to which they relate;
 - 18.7.2 the Company warrants that it is registered for GST and will notify FCNSW if that registration is cancelled;
 - 18.7.3 FCNSW warrants that it is registered for GST and will notify the Company if that registration is cancelled.
- 18.8 In this clause:
 - 18.9.1 **Adjustment Note** includes any document or record treated by the Commissioner of Taxation as an adjustment note or as enabling the claiming of an input tax credit for which an entitlement otherwise arises;
 - 18.9.2 **GST** includes any replacement or subsequent similar tax;
 - 18.9.3 **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth);
 - 18.9.4 **Tax Invoice** includes any document or record treated by the Commissioner of Taxation as a tax invoice or as enabling the claiming of an input tax credit for which an entitlement otherwise arises; and
 - 18.9.5 Terms defined in the GST Act have the same meaning in this clause unless provided otherwise.

19. PROVISION OF COMMUNICATION EQUIPMENT

- 19.1 For the purpose of ensuring adequate communications between the Company, any Other Supply Agreement Holders, FCNSW, and emergency services, the Company must provide and install the following communication items:
 - 19.1.1 Home/Office base telephone and e-mail;
 - 19.1.2 One mobile telephone capable of receiving email to be located at each Harvesting Operation during the hours of operation;

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- 19.1.3 Commercial UHF two-way radio receivers for each operator and/or machine, with such system to be accessible by FCNSW;
- 19.2 The Company must ensure that the communication items provided by the Company meet such reasonable standards and specifications (including frequency in the case of two-way radios) as FCNSW reasonably requires.
- 19.3 The Company must bear all costs associated with the installation and repair of the Company communication items.

20. LIABILITY FOR LOSS OF LOG PRODUCTS

The Company will have no claim against FCNSW for non-payment of the appropriate Harvesting Rates for Other Log Products harvested by the Company but lost or damaged prior to being brought into account under the Code of Procedure, unless the loss or damage occurred as a result of a negligent act or omission of FCNSW.

21. SALE OF TIMBER TO OTHER PERSONS AND FIREWOOD DONATION

- 21.1 FCNSW reserves the right to:

21.1.1 supply Timber and other timber from within the Area of Supply; or

21.1.2 issue licences to obtain Timber, timber, products or forest materials within the Area of Supply;

to any other person providing it does not, by so doing, adversely affect its capacity to perform its obligations under this Agreement and nothing in this **clause 21** relieves FCNSW from performing its obligations under this Agreement.

- 21.2 The Company may from time to time sell Timber which it owns to any person without the need for processing the Timber.
- 21.3 Each Year the Company must donate 10t of split dry firewood for community use under joint branding arrangements with FCNSW.


22. INDEMNITY AND INSURANCE

- 22.1 The Company must take out and maintain throughout the duration of this Agreement, with a licensed insurance company, insurance of the following kinds:

22.1.1 Worker's compensation insurance to the extent required by the law of the State of New South Wales. Such insurance must also cover work arising from the Company's obligations under **clause 23**.

22.1.2 Public liability insurance in such sum as shall be specified by FCNSW (but being a minimum of ten million dollars (\$10,000,000.00) per claim.

- 22.2 The insurance in **clause 22.1.2** must note the interest of FCNSW in the policy. Any insurance policy referred to in **clause 22.1** must contain a provision requiring the insurer, whenever the insurer gives to or serves on the Company a notice of cancellation or any other notice under or in relation to the said policy of insurance, at the same time to inform FCNSW in writing that the notice has been

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given to or served on the Company and ensure that notice of any claim is given by the insurer to FCNSW and that FCNSW is kept fully informed of subsequent action and developments concerning such claim.

- 22.3 FCNSW shall not be liable in any way and the Company indemnifies and must at all times indemnify and keep indemnified FCNSW against all actions, proceedings, claims, demands, costs and expenses in connection with or arising out of the loss of or damage to the Equipment.
- 22.4 The Company indemnifies and must at all times indemnify and keep indemnified FCNSW and its servants and agents against all actions, proceedings, claims, demands, costs and expenses in connection with or arising out of the performance by the Company of this Agreement and any acts or things done in pursuance of the Agreement by the Company or any of his sub contractors except where the action, proceedings, claims, demands, costs and expenses is in connection with or arises out of a negligent act or omission of FCNSW.
- 22.5 If requested the Company must promptly provide FCNSW with evidence of the currency of insurance required under this **clause 22**.

23. FIRE PREVENTION AND SUPPRESSION

23.1 FCNSW use of Company's Personnel and Equipment

- 23.1.1 Despite any other obligation under this Agreement the Company must provide fire - fighting services to Forests Corporation as follows:
- 23.1.2 the Company must, if requested by FCNSW (verbally or in writing), make its harvesting personnel who are accredited fire fighters and the Equipment, available to FCNSW to suppress, control or fight any fire in the Priority Area of Supply in accordance with directions (written or verbal) from FCNSW;
- 23.1.3 the Company must, without charge to FCNSW make ■■■ trained staff available for fire fighting (■■■ being a qualified fire fighter and ■■■ being qualified plant operators) if requested by FCNSW (verbally or in writing) for up to ■■■ hours per annum to suppress, control or fight any fire in the Priority Area of Supply in accordance with directions (written or verbal) from FCNSW;
- 23.1.4 the company must, without charge to FCNSW, make the heavy plant referred to in Schedule 6 available for fire fighting if requested by FCNSW (verbally or in writing) for up to ■■■ hours per annum to suppress, control or fight any fire in the Priority Area of Supply in accordance with directions (written or verbal) from FCNSW;

23.2 Training and Accreditation

- 23.2.1 FCNSW will at its own expense make provision for the fire-fighting training and fire-fighting accreditation of the Company's employees,
- 23.2.3 the company at its own expense will cover wages and transport of their staff to attend FCNSW's fire-fighting and plant operator training course and become Accredited Fire Fighter and plant operators under those courses (an Accredited Fire Fighter and Plant Operator).

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- 23.2.3 each Year prior to the commencement of the fire season (usually September) the Company, will at its own expense, ensure its employees, who are trained fire-fighters and plant operators, are medically fit and cleared for fire-fighting in accordance with FCNSW Fire-Fighter Health and Fitness Program (July 2008) or as amended by FCNSW from time to time.
- 23.3 Company's duty
- 23.3.1 The Company must take all reasonably practicable action to avoid the occurrence of, and to suppress, any fire which may occur in the vicinity of its Harvesting Operations.
- 23.4 Rate of Payment
- 23.4.1 FCNSW must pay the Company for its provision of fire-fighting services pursuant to **clause 23.1.2** at the rates specified in **Schedule 6** for those hours above those stipulated in **clauses 23.1.3** and **23.1.4**
- 23.5 Reimbursement for Loss or Damage
- 23.5.1 Subject to **clause 23.5.2**, FCNSW will reimburse and indemnify the Company for any loss of or damage to the Equipment occurring while the Equipment was under the direction and control of FCNSW in accordance with **clauses 23.1.2**.
- 23.5.2 The requirements of **clause 23.5.1** will not apply where:
- (a) the loss or damage to the Company's Equipment is covered by insurances taken out by the Company or its subcontractors;
 - (c) in the reasonable opinion of FCNSW the fire which caused FCNSW to exercise its rights of direction and control under **clauses 23.1.2** (the fire) was knowingly or negligently lit, caused or maintained by the Company, or its subcontractors;
 - (c) the fire broke out within 800 metres of the Company's Harvesting Operations and in the reasonable opinion of FCNSW the Company failed to comply with **clause 23.3.1**.
- 23.5.3 Subject to the following provisions FCNSW must compensate the Company for any increase in its workers compensation insurance premiums paid by the Company in a Year as a direct result of a claim by an employee of the Company arising from an injury to the employee which happened while the employee was engaged in the suppression or control of fire in the Area of Supply and while the employee was under the direction and control of FCNSW.
- (a) Despite any other provision of this Agreement FCNSW will not be liable to compensate the Company under this **clause 23.5.3** unless it is satisfied beyond reasonable doubt that the injury to the employee happened while:
 - (i) the employee was engaged in the suppression or control of fire in the Area of Supply; and
 - (ii) the employee was under the direction and control of FCNSW.
 - (b) The amount of compensation payable by FCNSW in relation to a particular Year will be limited to that amount of increase in the Company's workers compensation insurance premiums for that Year which would have occurred if:

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- (i) the Company had made no claims on its workers compensation insurance during the three years prior to that Year other than in relation to actual claims of a type which FCNSW is required to compensate for under this **clause 23.5.3**; and
- (ii) the employee's claim resulting in the increase in the Company's workers compensation insurance premiums was managed so that the employee resumed employment at the earliest date medically practicable.
- (c) FCNSW must be given notice of the injury within one hour of the injury occurring. A notice of injury may be given orally or in writing and must state:
 - (i) The name and address of the person injured;
 - (ii) A description of the injury (in ordinary language);
 - (iii) The cause of the injury (in ordinary language)
 - (iv) The date on which (and the time) the injury happened;
 - (v) The place where the injury happened;
 - (vi) The name (if known) or a description of the FCNSW officer under whose control and direction the person injured was acting at the time the injury happened; and
 - (vii) The FCNSW instruction which the person injured was complying with at the time the injury happened.
- (d) If FCNSW is given oral notice of the injury in compliance with **clause 23.5.3(c)**, FCNSW must be given written notice of the injury stating the matters set out in clause (c) within forty eight hours of the date it is given oral notice of injury.
- (e) The Company must ensure that FCNSW is provided (at no cost to FCNSW) with copies of any relevant documents requested in order to satisfy itself as to whether it is liable to pay compensation under this **clause 23.5.3** and the extent of the compensation payable.

23.6 Limitation of Liability

Except as provided in **clause 23.5.1** and as qualified by **clause 23.5.2** FCNSW shall not be liable in any way for, and the Company indemnifies and must at all times indemnify and keep indemnified FCNSW against, all actions, proceedings, claims, demands, costs and expenses in connection with or arising out of the loss of or damage to the Equipment.

24. SECURITY

- 24.1 The Company must provide and maintain security ('security') for the performance of the Company's obligations under this Agreement in a sum determined by FCNSW from time to time. The amount of the security ('secured amount') determined by FCNSW may not exceed the lesser of:
 - 24.1.1 the maximum amount which would be payable by the Company for 30% of the Allocation; or
 - 24.1.2 the amount determined for the Company in accordance with FCNSW's Credit Policy.
- 24.2 The security must:

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- 24.2.1 be in a form approved by FCNSW; and
- 24.2.2 be lodged within fourteen (14) days of written request by FCNSW.
- 24.3 FCNSW may, after advising the Company, draw upon the secured amount to cover any loss or damage caused by the Company's breach of its obligations under this Agreement.
- 24.4 If FCNSW draws on the secured amount under this Agreement but does not terminate this Agreement as a result of the breach or if FCNSW gives written notice of an increase in the secured amount, then the Company must provide additional security on FCNSW's written request so that the secured amount is maintained at the level determined under **clause 24.1**.
- 24.5 FCNSW may suspend the Company's rights to take Timber under this Agreement if the Company fails to lodge the security when requested to do so.
- 24.6 FCNSW must release the security to the Company upon the expiration of 6 months after the date of termination of this Agreement provided FCNSW is satisfied that no money is due or potential for further liability exists to FCNSW.

25. FORCE MAJEURE

- 25.1 If the Company is prevented from taking or accepting Timber or Other Log Products by Force Majeure and:
- 25.1.1 the Force Majeure was not caused by any act or omission on the part of the Company or any employee or agent of the Company;
- 25.1.2 the Company had taken all practicable precautions to prevent the Force Majeure; and
- 25.1.3 the Company has made all reasonable efforts to contain the effect of the Force Majeure;
- then the Company may apply to FCNSW for suspension or modification of its obligations under this Agreement to the extent that its ability to meet its obligations have been adversely affected by the Force Majeure.
- 25.2 Where the Company makes an application under **clause 25.1**, FCNSW will negotiate with the Company in good faith to review the Allocation taking into account the functions and obligations of FCNSW under this Agreement and the Act and the requirements for the Company to do all things practicable to mitigate the effect of the Force Majeure.
- 25.3 If FCNSW is prevented from performing all or any of its obligations under this Agreement by reason of Force Majeure:
- 25.3.1 the Company will have no claim against FCNSW under this Agreement, to the extent that the non-performance is due to the Force Majeure;
- 25.3.2 if FCNSW is unable to resume the performance of its obligations within a period of 3 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 4 months from the relevant date and in this regard time will be of the essence; and
- 25.3.3 FCNSW may allocate any Timber which is available to the Company and other persons in a manner which reflects FCNSW functions and obligations under the Act and accords with



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any directions of the Minister administering the Act provided that where reasonably practicable and not inconsistent with those functions, obligations or directions FCNSW must apportion the available Timber justly and equitably among those persons who would in the usual course, have been supplied with the Timber had it not been for the Force Majeure.

- 25.4 A party affected by Force Majeure must give initial notice of the existence or occurrence of the Force Majeure as soon as is practicable to do so and in any case it must provide a more detailed notice within 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.

26. LIMITATION OF LIABILITY

- 26.1 Where FCNSW is in breach of this Agreement by reason of any failure to make Timber available or to supply or deliver Timber, any loss suffered by the Company will be limited to any loss, damage or expense incurred by the Company as a direct result of the failure to make Timber available or to supply or deliver Timber under this Agreement and will not include any loss of profits or consequential loss.

27. DEFAULT OR INSOLVENCY

- 27.1 If the Company or FCNSW breaches or repudiates this Agreement, nothing in this clause will prejudice the right of either party to recover damages or exercise any other right.
- 27.2 If the Company commits a material breach of this Agreement and FCNSW considers that damages may not be an adequate remedy, FCNSW may give the Company a written notice to show cause.

Material breaches include without limitation:

- 27.2.1 failing to take the quantities of Timber set out in **clause 6**;
- 27.2.2 failing to carrying out Harvesting Operations in relation to Other Log Products in accordance with **clause 8**;
- 27.2.3 commencing any harvesting operations prior to receipt of a Plan of Operations or a Harvesting Plan in breach of **clause 9.4**;
- 27.2.4 failing to accept Timber in breach of **clause 13.1**;
- 27.2.5 failing to make payments in breach of **clause 17**;
- 27.2.6 failing to provide security or to adjust or vary the secured amount in breach of **clause 24**;
- 27.2.7 purporting to assign the whole or any part of this Agreement without the approval of the FCNSW in breach of **clauses 29 or 30**; and
- 27.2.8 failing to comply with conditions imposed by FCNSW pursuant to **clause 30** of this Agreement.
- 27.3 A notice under **clause 27.2** must:
- 27.3.1 state that it is a notice under **clause 27.2** of this Agreement;
- 27.3.2 specify the alleged material breach;



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- 27.3.3 require the Company to show cause in writing why FCNSW should not exercise its right to terminate under **clause 27.4**;
- 27.3.4 specify the time and date by which the Company must show cause (which must not be less than 14 days); and
- 27.3.5 specify the place at which cause must be shown.
- 27.4 If by the time specified in a notice under **clause 27.2** the Company fails to show reasonable cause why FCNSW should not exercise its right of termination, FCNSW may by notice in writing to the Company terminate this Agreement.
- 27.5 If:
- 27.5.1 the Company informs FCNSW in writing or its creditors generally that it is insolvent;
- 27.5.2 commits an act of bankruptcy;
- 27.5.3 has a bankruptcy petition presented against it;
- 27.5.4 is made bankrupt;
- 27.5.5 the Company enters a scheme of arrangement or composition with creditors;
- 27.5.6 a resolution is passed at a meeting of creditors to place the Company under official management in the form of an administrator or liquidator of the Company;
- 27.5.7 an administrator or liquidator of the Company is appointed;
- 27.5.8 a receiver of the property or part of the property of the Company is appointed;
- 27.5.9 a winding up order is made in respect of the Company; or
- 27.5.10 execution is levied against the Company by creditors, debenture holders or trustees or under a floating charge.
- FCNSW may, without giving a notice to show cause, terminate this Agreement by notice in writing to the Company.
- 27.6 If FCNSW commits a material breach of this Agreement and the Company considers that damages may not be an adequate remedy, the Company may give FCNSW a written notice to show cause. Material breaches include without limitation:
- 27.6.1 failing to comply with **clause 5**;
- 27.6.2 failing to process any application requesting an assignment of this agreement in breach of **clauses 29 or 30**.
- 27.7 A notice by the Company under **clause 27.6** must:
- 27.7.1 state that it is a notice under **clause 27.6** of this Agreement;
- 27.7.2 specify the alleged material breach;
- 27.7.3 require FCNSW to show cause in writing why the Company should not terminate this Agreement;

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27.7.4 specify the time and date by which FCNSW must show cause (which must not be less than 14 days); and

27.7.5 specify the place at which cause must be shown.

- 27.8 If by the time specified in a notice under **clause 27.6** FCNSW fails to show reasonable cause why the Company should not exercise its right of termination, the Company may by notice in writing to FCNSW terminate this Agreement.

28. RESOLUTION OF DISPUTES - MANDATORY MEDIATION AND ARBITRATION

- 28.1 If a dispute or difference between the parties arises out of or in connection with this Agreement or concerning the interpretation or operation of any provision of this Agreement which cannot be settled by the parties within twenty eight (28) 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.

- 28.2 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.

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 Chair of the Resolution Institute, to appoint an arbitrator and the arbitrator will be so appointed. Any arbitration must be undertaken in accordance with, and subject to, the Resolution Institute Arbitration Rules.

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

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

29. ASSIGNMENT

- 29.1 The Company may not without the prior approval of FCNSW assign its rights and entitlements under this Agreement in whole or part to any person.

- 29.2 If the Company is a corporation, any Change in Control of the Company (or if the Company is a subsidiary, any Change in Control of its holding company) will be deemed to be an assignment of the Company's rights and entitlements under this Agreement.

- 29.3 If the Company wishes to assign the whole or any part of this Agreement it must make a written application to FCNSW requesting an assignment and must provide all details and information concerning the assignee and the effect of the assignment as may be reasonably required by FCNSW.



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- 29.4 The Company must pay all debts due and payable to FCNSW under this Agreement before an assignment (in whole or part) of its interest in this Agreement.
- 29.5 Upon receipt of any request for an assignment of the whole or any part of this Agreement, FCNSW must process the application in accordance with **clause 30** provided the Company has supplied any details and information required by FCNSW under **clause 29.3**.
- 29.6 The Company must ensure that any assignee executes all agreements and other documents which FCNSW may reasonably require to record or effect any assignment.

30. FCNSW'S APPROVAL FOR ASSIGNMENT

- 30.1 FCNSW must determine any request for an assignment of the whole or part of this Agreement within 1 month of receiving the request for assignment unless FCNSW extends that period by notice in writing to the Company provided that any such notice must state the extended period, give the reasons why the recommendation has not been made to the date of the notice, and the reasons why a further period is required before the recommendation can be made.
- 30.2 FCNSW may determine an application requesting an assignment of the whole or part of this Agreement by granting the application (either unconditionally or subject to conditions of the kind set out in **clause 30.3**) or by refusing the application. An application may only be refused on the following grounds:
- 30.2.1 such grounds as may be prescribed by regulations under the Act;
- 30.2.1 such grounds as FCNSW (acting reasonably) considers relevant having regard to;
- (a) the need to promote a competitive timber industry and to prevent misuse of market power; or
 - (b) government policy including the socio-economic impact of the assignment on rural communities; or
 - (c) the impact on FCNSW's capacity to meet its obligations under this Agreement or other written contracts for the harvesting, haulage or supply of timber; or
- 30.2.2 At the time the application is made the Company has committed a material breach which has not been remedied or rectified including without limitation any failure to make payment to FCNSW as required under **clause 17**.
- 30.3 If the Company has committed a material breach which has not been remedied or rectified including without limitation any failure to make payment to FCNSW as required under **clause 17**, FCNSW may impose (without limitation) a condition on an application for requesting an assignment of the whole or part of this Agreement, requiring any assignee to undertake the rectification or remediation of the material breach including the payment in full of any accrued debts due and owing to FCNSW.

31. VARIATION

- 31.1 This Agreement comprises the entire understanding of the parties.
- 31.2 None of the provisions of this Agreement may be varied, waived, discharged or released either at law or in equity, unless by the express consent of the parties in writing.

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32. INTEREST

- 32.1 In the event that the Company fails to pay any money due to FCNSW when required to do so by this Agreement, interest will accrue on all unpaid money from the date of default until payment in full at the rate of interest per annum for the time being payable under section 101 of the Civil Procedure Act 2005 (NSW).

33. NOTICE

- 33.1 Any notice required to be served under this Agreement may be served at the places specified for each party as set out in **Schedule 1**.
- 33.2 The parties may change the address for service of notice from time to time by notice in writing to the other party.
- 33.3 A notice under this Agreement must:
- 33.3.1 be in writing and directed to the other party as specified in **clause 33.1** or the address last notified by the intended recipient to the sender; and
 - 33.3.2 forwarded to the address or the email address of that party.
- 33.4 A notice under this Agreement will be deemed to be served:
- 33.4.1 in the case of delivery in person – when delivered to the recipient's address for service and a signature received as evidence of delivery;
 - 33.4.2 in the case of delivery by post – within three business days of posting;
 - 33.4.3 in the case of delivery by email, on receipt of confirmation by the sender that the recipient has received the email.
- 33.5 Despite the preceding clause, if delivery or receipt of a communication is on a day which is not a business day in the place to which the communication is sent or is later than 5 pm (local time in that place) it will be deemed to have been duly given or made at 9 am (local time at that place) on the next business day in that place.

34. GOVERNING LAW

- 34.1 This Agreement is governed by the laws of New South Wales and the parties agree to the jurisdiction of the Courts of New South Wales.

35. SEVERABILITY

- 35.1 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.

36. GENERAL

- 36.1 A party terminating this Agreement as a result of a failure or default of the other party may only claim damages for any loss resulting from the failure or default if the claim for damages is not excluded under this Agreement.

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- 36.2 If a party is at liberty to determine a matter under this Agreement or act unilaterally with respect to some amendment of any procedure (including the Code of Procedure) it must, in doing so, act reasonably and in good faith.
- 36.3 If a party is obliged to consult with another party the parties must consult with each other in good faith and have reasonable regard to what is put by the other party.

37. CONFIDENTIALITY


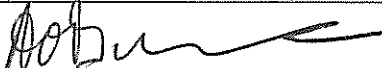
- 37.1 No party will disclose the contents or terms of this Agreement or any information or documents received by it in connection with the negotiation of this Agreement or pursuant to the provisions of this Agreement without the prior written consent of the other parties, except to the extent that:
- 37.1.1 the information is available to the public generally;
 - 37.1.2 that party is required to make the disclosure by law or to make any filing, recording or registration required by law;
 - 37.1.3 the disclosure is necessary or advisable for the purpose of obtaining any consent, authorization, approval or licence from any public body or authority;
 - 37.1.4 it is necessary or expedient that the disclosure be made to any taxation or fiscal authority;
 - 37.1.5 the disclosure is made on a confidential basis to the professional advisers of that party (including any industry association) 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;
 - 37.1.6 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;
 - 37.1.7 the disclosure is made on a confidential basis to a potential financier of the party, purchaser of the party or shares in the party, or assignee of the party's interest in this Agreement.

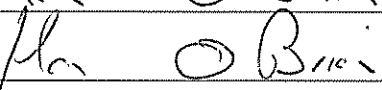
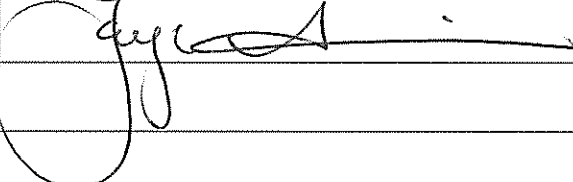
38. OBLIGATION TO CONSULT

- 38.1 Where in this Agreement there is an obligation to meet to review, confer, negotiate or consult the obligation of each party is to do so in good faith and have reasonable regard to matters put by the other in respect of the relevant subject matter.
- 38.2 Where in this Agreement a party is entitled to determine a matter following a review, conference, negotiation or consultation with the other, in determining the matter the party determining the matter must act reasonably and in good faith and have reasonable regard to matters put by the other in respect of the relevant subject matter.



EXECUTED as an Agreement

Executed for and on behalf of FCNSW	
Delegate Name	Dean Anderson
Delegate Signature	
Witness Name	Andrew O'Brien
Witness Signature	

Executed for and on behalf of the Company	
Director's Name	Ken O'Brien
Director's Signature	
Witness Name	FAYE ASHWIN
Witness Signature	
Director/Secretary Name	
Director/Secretary Signature	
Witness Name	
Witness Signature	

Note: To be signed by one Director if there is only one Director of the Company. To be signed by two Director(s) or one Director and the Company Secretary if there are more than one Director of the Company.



SCHEDULE 1

ITEM 1

Date of Agreement: 22.5.19

ITEM 2 – CONTACT DETAILS OF THE PARTIES

(a) Company

Company Name:	O'Briens Sawmill Pty Ltd
Name(s) of Principal(s):	Ken and Faye OBrien
Australian Company Number:	002 76 2 0754
Australian Business Number	68 368 277 042
Business Address:	LOT 2 LITTLE FOREST LANE
Telephone Number(s):	
E-mail	

(b) FCNSW

Title:	THE GENERAL MANAGER – HARDWOOD FORESTS
Business Address:	THE FCNSW, PO BOX 100, BEECROFT NSW 2119
Telephone Number:	02 9872 0111
Email	DeanA@fcnsw.gov.au

ITEM 3

Commencement Date	1 July 2019
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ITEM 4

Expiry Date	30 June 2024
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ITEM 5

Stumpage Price	
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ITEM 6

Allocation	<p>(a) 66.326% of that part of the IFOA ET Quantity that is less than 35,000 tonnes plus 25% of any part of the IFOA ET Quantity that exceeds 35,000 tonnes; and</p> <p>(b) Integrated Residue 1,000tonnes plus 25% of any part of the IFOA IR Quantity that exceeds 17,533 tonnes;</p> <p>provided that:</p> <p>(c) the Company's entitlement to a part of the IFOA ET Quantity combined with its entitlement to a part of the IFOA IR Quantity may not exceed 30,214 tonnes;</p> <p>(d) if the IFOA ET Quantity exceeds 35,000 tonnes and the IFOA IR Quantity that exceeds 17,533 tonnes FCNSW may determine the proportions of Early Thinnings and Integrated Residue Timber in the Company's entitlements to the excess tonnage;</p> <p>(e) unless otherwise agreed if the IFOA IR Quantity is varied such that it becomes in excess of 17,533 tonnes after the Commencement Date the resultant increase in the Allocation shall not occur until the commencement of the next Year after the variation occurred.</p>
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Quarter 1 (1 Jul – 30 Sept)	25% of the Allocation
Quarter 2 (1 Oct – 31 Dec)	25% of the Allocation
Quarter 3 (1 Jan – 31 Mar)	25% of the Allocation
Quarter 4 (1 Apr – 30 Jun)	25% of the Allocation

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SCHEDULE 2 – RESIDUE SPECIFICATION

SPECIFICATIONS

WESTERN REGION – RESIDUE SPECIFICATION

Residue Specifications

Length	Random length with minimum of 2.1m
Species	Red Gum
Size	<ul style="list-style-type: none">• Minimum toe diameter of 10cm under bark• Maximum diameter is unlimited
Defect	<ul style="list-style-type: none">• Greater than 10cm of utilizable wood around at least 50% of the circumference.• Spiral grain is unlimited.• Sweep is not to exceed 100% of the centre diameter over a 2.1m length.• Branch stubs are not to exceed 20cm from the log.• All other defect is unlimited
Moisture Content	<ul style="list-style-type: none">• Unlimited
Presentation	<ul style="list-style-type: none">• A reasonable attempt is to be made to remove bark.• All logs are to be free from loose material that may fall off during transit.• All logs are to be flushed trimmed head and butt as close to 90° to the log as possible

Servicing

Unless acceptable to the licensee, the contractor shall remove any defective sections by servicing, to the extent necessary to produce a log which conforms to these minimum specifications.

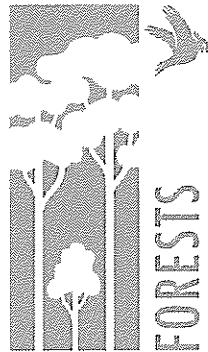
The licensee may accept a log that does not comply with the minimum specifications outlined. Once accepted, such logs will be counted as part of (“debited against”) the annual allocation.

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SCHEDULE 3 – CODE OF PROCEDURE FOR REDGUM TIMBER SALES

CODE OF PROCEDURE



CODE OF PROCEDURE
FOR
RED GUM TIMBER SALES
WESTERN

FEBRUARY 2014

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Section 1: Measuring and Marking of Log Products

1.1 Measuring of Log Products

1.1.1 Sale by volume

The Harvesting Contractor must ensure that Log Products which are sold by volume are measured in accordance with Table 1.

Table 1 : Log Measurement

PRODUCT	LENGTH	DIAMETER
Quota	Actual length in decimetres rounded down to the next whole decimetre	Actual centre diameter underbark in centimetres rounded down to the next whole centimetre

1.1.2 Sale by weight

Ex Quota and Residue logs are to be sold by weight. A certified weighbridge will be used to determine the weight of each load.

1.2 Marking of Log Products

1.2.1 Log Product Code

The Harvesting Contractor must ensure that log products (including residue) are clearly marked at the large end using paint or crayon (where applicable) in accordance with Table 2.

Table 2 : Log Product Code

PRODUCT	CODE
Quota	O
Exquota	Z
Residue/Thinnings	DOT IF >25CMS BUTT DIAM

Section 2: Delivery Dockets

Load details will be recorded on a Delivery Docket prior to removal of log products from the loading point and a copy of the Delivery Docket will be carried with the load. Delivery Dockets take the form a paper Delivery Docket from a Delivery Docket Book or electronically through the EDX system.

FCNSW will issue Delivery Docket books to the Company at cost price.

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Completion of Delivery Dockets

2.1 Delivery dockets

The Harvesting Contractor must ensure that, prior to departure from the Loading Site, the following details are completed on the Delivery Docket:

- i) Customer/Location
- ii) Date
- iii) Time
- iv) Region
- v) State forest or lease name
- vi) Compartment no# or lease no#
- vii) Product (Where relevant)
- viii) Grade (Where relevant)
- ix) Harvest, Load and Haulage Contractor
- x) Truck Driver Name
- xi) Gross, Tare and Net Weight**

Where logs are to be accounted for by volume, the following additional details must be recorded for each log on the load:

- Length (refer to Table 1)
- Diameter (refer to Table 1)
- Product Code (refer to Table 2)

2.2 Receipt of Delivery

Where paper Delivery Dockets are used, dockets must be signed by the Customer and will be distributed in the following manner:

ORIGINAL – Forest Corporation Copy. This must be signed by the Customer and then returned to FCNSW. Verification of receipt is achieved through the process outlined in Section 2.4.

DUPLICATE – Customer copy. Signed copy to be retained by the Customer.

2.3 Docket Errors

In the event of a Delivery Docket error being identified prior to Delivery, or at the Delivery Site prior to the truck which delivered the load departing the site, the necessary amendment must be made on the Delivery Docket where paper dockets are used and such changes initialled by the Customer's representative and the truck driver. The customer will then submit the original docket to FCNSW. The duplicate copy of the docket must be retained by the Customer for 60 days from the date of the docket. Where the error is made on the electronic docket, the customer must send an email to Tereene.hill@fcnsf.com.au with docket number and nature of error.

Errors relating to log grade are to be treated separately as a disputed log as these changes can only be made by a FCNSW Officer (refer section 4).

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2.4 Submission of Dockets

The original paper Delivery Docket and duplicate copies of the Delivery Docket must be signed with the original sent to FCNSW by the customer.

The original of any paper Delivery Dockets utilised during the month must be lodged with the Western Region, Dubbo Forestry Office on a weekly basis and **no later than the first calendar day of the following month after the monthly accounting period**, or such other times as the District Manager may direct. Paper Dockets may be faxed with originals posted as soon as possible.

This process will provide the means of verification of delivery and acceptance or otherwise of loads delivered.

Duplicate copies of paper Delivery Dockets must be retained by the Customer for a minimum of 60 days from the date of the docket, unless otherwise requested by FCNSW.

2.5 Basis of Accounts

Delivery Dockets (paper and electronic) will form the primary basis of accounts.

The outcome of docket errors and disputed logs / loads may be used to vary the information initially submitted on a Delivery Docket. In those cases the docket data as varied will be the basis of accounts.

Docket errors are errors made on the docket that do not affect the log or load details. Disputed logs/loads are errors on the docket that do.

2.6. Calculation of volume

2.6.1. Quota

The volume of a Quota sawlog is calculated using the formula below

$$V = L \times \pi \times D^2 / 4$$

Where

V is volume in cubic metres

L is log length in metres rounded down to the next even decimetre

D is log diameter in metres

SECTION 3: SALE BY WEIGHT

3.1 Sale by Weight Using Weighbridges

3.1.1 Use of Weighbridges en route to a Delivery Site

Where loads to a customer are weighed on a weighbridge en route to the Customer the following process applies:

- The gross weight of the truck, trailer and load is to be recorded on an approved printed receipt at the weighbridge and the weight receipt carried with the load and

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- the gross weight is to be recorded on the Delivery Docket and weight receipt attached to the Docket. Originals will be submitted to FCNSW by customer

3.1.2 Weighbridges at the Delivery Site

Where weights are recorded on an approved printed receipt, the tare weight of the truck and the trailer and the net weight of the load is to be printed on the receipt referred to above following the unloading of the truck. The tare weight, gross weight and net weight are to be recorded on the Delivery Docket and a copy of the weighbridge docket is to be attached to the original copy of the Delivery Docket. Where electronic dockets are used, all weighbridge dockets are to be sent to Western Region, Dubbo Forestry Office on a weekly basis and **no later than the first calendar day of the following month after the monthly accounting period**, or such other times as the District Manager may direct.

Section 4: Disputed Logs

4.1. Disputed Logs

Section 4 only applies in cases where FCNSW makes Timber available by conducting Delivered Sales. Where the Customer is, or engages, the Harvest Contractor directly to produce Timber under their supply agreements with FCNSW the customer will be deemed to have accepted the Timber when they load it onto trucks at the Loading Site.

A disputed log is a log where the Customer disagrees with either the log details or the grade of the whole or part of the log.

The Customer, if disagreeing with log details or grade, must notify FCNSW of the disputed log within three business days of the delivery of the log.

A FCNSW Officer will inspect any disputed logs within five working days of being notified wherever practical.

Where the FCNSW Officer determines that the disputed timber fails to meet the Specifications or that there has been an error on the Delivery Docket, action as determined in Table 6 below will occur. Where the FCNSW Officer determines that the disputed timber fails to meet the Specifications and the customer refuses to accept the log, FCNSW will request the Harvesting Contractor to arrange for the log to be picked up and delivered to an alternative delivery site. Where this is not practical, FCNSW will make alternative arrangements. Any logs so redirected will require a new Delivery Docket to cover the delivery as set out in this Code. The action required is set out in Table 6.

Any dispute over a decision made by a FCNSW Officer regarding disputed logs should be referred to the District Manager for resolution.

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Table 6 - Disputed log actions

DOCKET OR LOG GRADING ISSUES		ACTIONS			
Problem	Details	Remark and tag log	Complete 'Assessment of Disputed Logs' form	Arrange to shift log(s)	Complete a new docket
Docket	Log measurement information incorrect		Yes		
	Load weight information incorrect		Yes		
	Logs incorrectly tallied		Yes		
Log Marking	Incorrect Marking	Yes	Yes		
Regrading	Change grade or reject	Yes	Yes		
	Re-servicing	Yes	Yes		
Redirection	Redirected following regrading	Yes	Yes	Yes	Yes
	Rejects loaded and delivered by haulier		Yes	Yes	Yes

Section 5: Review and Amendment of this Code of Procedure

FCNSW may, after consultation with the Customer, review and amend any aspect of this Code of Procedure from time to time as determined by FCNSW.

Schedule of Amendments [Copies Attached]

Amendment No:	Date	Clauses Amended

SECTION 6: ACKNOWLEDGMENT OF AGREEMENT

The FCNSW of New South Wales and

O'Brien Sawmills
Hereby agree to this Code of Procedure.

For and on behalf of

The FCNSW of NSW

Date: 22.5.19

Section 7: Definition of Terms

Mon O'Brien
For and on behalf of
O'Brien Sawmills

Date: 27.02.19

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Customer	: Means the principal of a sawmill or other processing plant to which the log products entered upon a Delivery Docket are to be delivered or otherwise made available to.
Delivery Docket	: Means a sequentially numbered paper docket for recording the details of each truck load of logs. Load details are handwritten on a paper docket from a Delivery Docket Book.
Gross Weight	Weight of the truck in tonnes, trailer and driver with a load of Logs.
Harvesting Contractor	Means the entity who conducts or is responsible for Harvesting Operations.
Harvesting Operations	Means the selection and felling of trees, servicing of trees into Log Products, extraction of Log Products to Log Landing, debarking, segregation and stockpiling of Log Products at the Log Landing, and ancillary works including roading, tracking, Log Landing construction, site rehabilitation and the moving of harvesting equipment between Harvesting Units and the loading of Log Products on to vehicles at the Log Landing
Loading Site	: Means the point from which log product is loaded onto a haulage vehicle
Logs	Hardwood logs meeting specifications as set out in the Wood Supply Agreement with the Customer.
Net Weight	Difference between gross weight and tare weight in tonnes.
Signature	Means a handwritten signature on a paper or printed Delivery Docket. Signed/Sign has a corresponding meaning.
FCNSW	: Means the FCNSW Regional Office of the Region from which the load was obtained, or other office agreed with FCNSW.
FCNSW Officer	: Means an employee of FCNSW.
Tare Weight	Weight of the unloaded truck in tonnes with the trailer on the ground, driver, and fuel tanks half full.
Volume	True underbark volume of Logs in cubic metres.



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SCHEDULE 4 – EQUIPMENT SAFETY REQUIREMENTS

1. EQUIPMENT

- 1.1. The Company must maintain the Equipment in good, safe running order and condition.
- 1.1.1 The Company must install EBS (Electronic Braking System) to 50% of their haulage fleet used to hauled Timber under this Agreement by 30 June 2020.
 - 1.1.2 The Company must install EBS (Electronic Braking System) to 100% of their haulage fleet used to haul Timber under this Agreement by 31 Dec 2020.
 - 1.1.3 The Company must install STLB (Self Tensioning Load Binders) on all its log trailers used to haul Timber under this Agreement by 30 June 2020.
 - 1.1.4 The Company must have front and rear gates on all trailers used to haul Timber under this Agreement as at the Commencement Date.
- 1.2. The Equipment must comply at all times with the relevant legislation, Codes, and any other specification reasonably nominated by FCNSW, in particular but not limited to, regarding operator protective structures and seat belts.

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SCHEDULE 5 - HARVESTING OTHER LOG PRODUCTS AS FCNSW CONTRACTOR

The following conditions apply if the Company is acting as FCNSW's contractor in harvesting and loading Other Log Products onto Other Agreement Holders haulage vehicles ("OLP Work") pursuant to **clause 8.3**.

1. The Company is engaged as an independent contractor, and is not an employee or agent of FCNSW or the Crown in right of the State of New South Wales for any purpose. Nothing in this Agreement shall be deemed to create a partnership between the Company and FCNSW.
2. FCNSW will pay the Company the Harvesting Rate for its OLP Work.
3. The Harvesting Rate for the Year commencing at the Commencement Date is \$30 per Tonne. The Harvesting Rate for each Year thereafter will be the Harvesting Rate for the previous Year increased by 2.5%.
4. At the conclusion of each calendar month FCNSW must calculate the payment due to the Company for its OLP Work during the month.
5. FCNSW must provide a statement to the Company detailing the quantity and type of Other Log Products subject to its OLP Work during the previous month from each Harvesting Unit and the amount due and payable to the Company for that month.
6. FCNSW must pay the Company any payment referred to in clause 4 of this Schedule within thirty days of the end of the calendar month to which it relates.
7. The quantity of Other Log Products produced by OLP Work for payment by FCNSW will be the quantity received by the relevant Other Agreement Holders as determined in accordance with the Code of Procedure.
8. To facilitate OLP Work except where otherwise directed by FCNSW either verbally or in writing, the Company must, at the cost of the Company, make loading facilities available at the Log Landing and must cooperate with FCNSW or Other Agreement Holders in the loading of Other Log Products onto the Other Agreement Holder's trucks.
9. In **clause 8** of this Schedule loading facilities means log loading equipment capable of loading Other Log Products onto the Other Agreement Holder's trucks either with an operator (who must load Log Products at the direction of the Other Agreement Holder), or without an operator if agreed between the Other Agreement Holder, the Company, and FCNSW.
10. The Company must use best endeavours to complete loading of the Other Agreement Holders trucks as efficiently as possible and within forty five minutes from the time the truck is positioned to enable loading to commence.
11. The Company must comply with the following safety obligations where a reference to the Contractor is a reference to the Company:

1. Definitions

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

"construction work" has the same meanings given to that term under the Work Health and Safety Regulation 2011 (NSW).

"Contractor Site" means the area in which the work pursuant to this Agreement will be performed.

"Contractor Risk Controls" has the meaning given to that term in clause 3(d) of this Schedule.

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"ISO" means any applicable international standards as established by the International Organisation for Standardisation, which is the body that develops and publishes the international standards.

"Lost Time Incident" means an incident during the performance of this Agreement where an worker suffers injury or illness which results in at least one full work day/shift being lost after the day on which the injury occurred.

"Medical Treatment Incident" means an incident during the performance of this Agreement where a worker is injured and requires professional medical treatment.

"Near Miss" means an unplanned incident that occurs which does not result in injury or disease although it had the potential to do so

"Notifiable Incident" means an act or omission which is required to be notified to the relevant work health and safety regulator or mines regulator in accordance with WHS Laws.

"principal contractor" has the same meanings given to that term under the Work Health and Safety Regulation 2011 (NSW).

"Reportable Incident" means a Loss Time Incident, Medical Treatment Incident or a Near Miss which is not a Notifiable Incident.

"Safety Management System" means a documented system for the management of all matters relating to Work Health and Safety including induction records, emergency procedures, inspections, consultation, training programs, incident reporting, accident records, safe working systems, hazard management and performance monitoring. Specifically the system must be in accordance with relevant Australian or International Standards for Safety Management for example AS4801 and the WHS Laws.

"WHS Laws" means:

- (a) Work Health and Safety Act 2011 (NSW), as amended from time to time;
- (b) Work Health and Safety Regulation 2017 (NSW) as amended from time to time;
- (c) Work Health and Safety (Mines and Petroleum Sites) Act 2013 (NSW), as amended from time to time;
- (d) Work Health and Safety (Mines and Petroleum Sites) Regulation 2014 (NSW), as amended from time to time
- (e) any Australian Standards and any ISOs that are applicable and relevant to any work performed pursuant to this Agreement;
- (f) any Codes of Practice that are applicable and relevant to the work performed pursuant to this Agreement; and
- (e) any other obligations imposed or standard prescribed by any other Act, Regulation, Australian Standard, Code of Practice, Order, or any other instrument creating legal obligations or prescribing standards relevant to work performed pursuant to this Agreement.

"WHS Plan" means a plan prepared in accordance with clause 3.5 of this Schedule

"WHS Risk Register" means a register of the WHS risks identified at the Contractor Site, along with the inherent risk rating, current controls and residual risk ratings.

"Worker" has the meaning given to that term in the Work Health and NSW Safety Act 2011 (NSW)

"workplace" has the same meanings given to that term under the Work Health and Safety Act 2011 (NSW)

2. Contractor Obligations

2.1 General

Without limiting its obligations under this Agreement, the Contractor must at all times comply, and must ensure that its subcontractors and any other person engaged by the Contractor for the purpose of this Agreement complies, with the WHS Laws.

2.2 Management and Control

The FCNSW authorises the Contractor to manage and control each Contractor Site during the Term except in circumstances where it is agreed by the parties in writing that FCNSW resumes back the management and control of the Contractor Site on a temporary basis.

2.3 Principal Contractor where Construction Work is Undertaken

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Without limiting the Contractor's obligations under any other provision of this Agreement, to the extent the work pursuant to this Agreement includes construction work to be carried out by the contractor:

- (a) the FCNSW engages the Contractor as principal contractor in respect of the work pursuant to this Agreement;
- (b) the FCNSW authorises the Contractor to have management and control of each workplace which the work pursuant to this Agreement is to be carried out and to discharge the duties of a principal contractor under the WHS Laws;
- (c) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Laws; and
- (d) the Contractor's engagement and authorisation as principal contractor will continue while ever any construction work is carried out during the Term,

unless sooner revoked by FCNSW terminating this Agreement pursuant to any provision of this Agreement or according to law.

2.4 Warranty

The Contractor represents and warrants that:

- (a) it has given careful, prudent and comprehensive consideration to the work, health and safety implications of the work to be performed by it pursuant to this Agreement; and
- (b) the proposed method of performance of that work complies with, and includes a system for identifying and managing work, health and safety risks which complies with the WHS Laws.

3. Safety Management Systems

3.1 Hazard Identification, Risk Assessment and Control

The Contractor:

- (a) must maintain and apply a Safety Management System which must as a minimum comply with all WHS Laws applicable to the Contractor;
- (b) must provide copies of documents recording the Safety Management System to FCNSW if requested;
- (c) must not, and must do all that is reasonably practicable to ensure that its subcontractors and any other person engaged by the Contractor do not, at any time, cause FCNSW to be in contravention of a WHS Law or any other law;
- (d) acknowledges that, as at the commencement of the Term, it has systems (including the Safety Management System), processes, practices and procedures in place which address and mitigate the risks involved in the performance of work pursuant to this Agreement ("Contractor Risk Controls");
- (e) during the Term maintain and apply the Contractor Risk Controls.

3.2 Where a hazard is identified

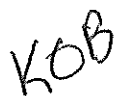
When the Contractor discovers a new hazard to work, health and safety at the applicable Contractor Site that is of sufficient concern that it is proposed to add it to the WHS Risk Register, the Contractor shall:

- (a) immediately notify the FCNSW Representative, detailing the hazard;
- (b) follow all instructions and directions of the FCNSW Representative; (if any) and take all reasonable steps to eliminate or minimise the risks to health, work and safety associated with the identified hazard; and
- (c) provide to the FCNSW Representative within 10 working days of discovery of the hazard, details of any updates to the Safety Management System or Contractor Risk Controls which identifies the hazard and describes the risk mitigation strategies necessary to address the related work, health and safety risks.

Nothing in clause (b) or (c) is intended to derogate from the management and control of the Contractor Site conferred upon the Contractor. The Contractor acknowledges and agrees FCNSW may give directions to address work, health and safety issues which arise from time to time at the applicable Contractor Site where it has a legitimate interest, having regard to its own obligations as a "person conducting a business or undertaking" pursuant to WHS Laws, in doing so.

3.3 Training and Competency and Licensing

The Contractor shall:



- (a) ensure that if the WHS Laws require that:
 - (i) a person:
 - A. be authorised or licensed (in accordance with the WHS Laws) to carry out any work at the workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or
 - B. has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Laws); or
 - (ii) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace plant or substance, or work is so authorised or licensed;
- (b) not direct or allow a person to carry out work or use plant or substance, at a workplace unless the requirements of subparagraph (a) are met (including any requirement to be authorised, licensed, qualified or supervised); and
- (c) if requested by FCNSW, or required by the WHS Laws, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work, health and safety (as the case may be) to the satisfaction of FCNSW before the Contractor or its subcontractors or any other person engaged by the Contractor for the purpose of this Agreement commence such work.

3.4 WHS Inductions

- (a) The Contractor shall ensure that any Workers of the Contractor, its subcontractors, any other person engaged by the Contractor for the purpose of this Agreement and any FCNSW Workers who will perform work on the Contractor Site:
 - (i) participate in safety-related induction training or site induction briefings provided by the Contractor for the Contractor Site; and
 - (ii) participate in any additional safety-related induction or site induction briefings, as required, provided by FCNSW.
- (b) The Contractor shall ensure that all persons attending the safety related training or site induction briefings sign an attendance form and a site safety induction form where applicable.

3.5 Site Management

The Contractor will develop a WHS Plan that addresses the following matters:

- (a) the names, positions and health and safety responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the work performed pursuant to this Agreement;
- (b) the arrangements in place between any person conducting a business or undertaking at the Contractor Site, for consultation, co-operation and co-ordination of activities in relation to compliance with their duties under WHS Laws;
- (c) WHS risk management through:
 - (i) appropriate methodologies;
 - (ii) WHS Risk Registers;
 - (iii) processes and practices to manage specific hazards identified in the WHS Risk Register and Contractor Risk Controls; and
 - (iv) safe work method statements.
- (d) the arrangements for the collection and any assessment, monitoring and review of safe work method statements at the Contractor Site;
- (e) hazard and incident reporting, investigation and management;
- (f) induction, training and competency;
- (g) any Contractor Site specific health and safety rules, and the arrangements for ensuring that all persons at the Contractor Site are informed of those rules;
- (h) emergency management;
- (i) first aid;
- (j) inspections and housekeeping;




- (k) audits;
- (l) document management and control;
- (m) contractor management;
- (n) management of change;
- (o) management review;
- (p) when work pursuant to this Agreement is being performed at the Contractor Site how:
 - (v) public access to the Contractor Site will be prevented;
 - (vi) public access through a Contractor Site, when necessary will be enabled and controlled;
 - (vii) construction traffic (pedestrian and vehicular) will be controlled at its interface with public traffic;
 - (viii) appropriate amenities are made available;
 - (ix) risks associated with electricity supply are managed;
 - (x) risks associated with exposure to the elements are managed;
 - (xi) adequate light is provided; and
 - (xii) risks associated with existing services are managed.

3.5 Consultation Co-operation and Co-ordination

FCNSW and the Contractor:

- (a) shall, where applicable, comply, and the Contractor shall ensure that all Subcontractors and any other person engaged by the Contractor for the purpose of this Agreement comply, with the obligation under the WHS Laws to, so far as is reasonably practicable, consult, co-operate, and co-ordinate activities with FCNSW, the Contractor or the Subcontractors (as the case may be) and any other person who, concurrently with FCNSW, the Contractor or the Subcontractor (as the case may be) has a work health and safety duty under the WHS Laws in relation to the same matter; and
- (b) acknowledge that they have a duty under the applicable WHS Laws to ensure, so far as is reasonably practicable, the health and safety of all Workers performing any work related to, or in connection with, this Agreement including but not limited to:

- (xiii) FCNSW Workers;
- (xiv) Contractor Workers and Subcontractor Workers; and

other persons in connection with work performed pursuant to this Agreement.

3.6 Reporting Incidents

- (a) The Contractor must notify FCNSW:
 - (i) immediately of any Notifiable Incident; or
 - (ii) Within twenty four (24) hours of a Loss Time Incident, Medical Treatment Incident or a Near Miss which is not a Notifiable Incident.
- (b) Within seven (7) days of a Reportable Incident, the Contractor must forward a report of the incident and if requested by FCNSW an incident investigation report as soon as reasonably practical. FCNSW may request to participate in or observe the Contractors investigation, or undertake its own investigation. The Contractor must assist FCNSW to complete its own investigation.
- (c) The Contractor shall in accordance with the WHS Laws report to the relevant work health and safety or mines regulator any Notifiable Incident that involves:
 - (xv) Contractor or Subcontractor Workers on Contractor Site;
 - (xvi) FCNSW Workers on Contractor Site; or
 - (xvii) Contractor or Subcontractor Workers on FCNSW property outside the Contractor Site

provided that the Contractor must consult with and accept the assistance of FCNSW in the reporting process if FCNSW elects to become involved.

- (d) The Contractor shall in respect of any such Notifiable Incident:

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- (i) immediately provide FCNSW with a copy of the notice required to be provided to the relevant work health and safety or mines regulator;
- (ii) undertake and complete an investigation into the Notifiable Incident as soon as reasonably practical after notification to the relevant work health and safety or mines regulator;
- (iii) promptly provide FCNSW with a copy of the investigation report relating to the Notifiable Incident upon completion of such investigation;
- (iv) promptly provide FCNSW with copies of any notice(s) or other documentation issued by the work health and safety or mines regulator; and
- (v) as soon as reasonably practical after the date of notification to the relevant work health and safety or mines regulator, provide FCNSW with a summary of the related investigations, actions taken and any impact on the performance of work pursuant to this Agreement that may result from the Notifiable Incident.

4. Contractor Site Access

The Contractor shall give and ensure that its subcontractors and any other person engaged by the Contractor gives the FCNSW and any person authorised by FCNSW access to:

- (a) Any Contractor Site to conduct site inspections for the purpose of monitoring the Contractor's or any subcontractor's (as the case may be) compliance with WHS Laws; Safety Management Systems, Contractor Risk Controls and WHS Plan; and
- (b) all internal and third party audit results in relation to work health and safety in relation to performed under this Agreement.

5. Compliance with FCNSW policies

The Contractor must at all times comply, and must ensure that its subcontractors and any other person engaged by the Contractor for the purpose of this Agreement complies with all FCNSW policies of which it has been made aware and that are applicable to any work performed pursuant to this Agreement.

FCNSW reserve the right to implement an alcohol and drug testing program on contractors and other workers performing work under an agreement with FCNSW. This will be in accordance with FCNSW Alcohol and Drug testing policy and procedures. The Contractor must comply with any such program if implemented in relation to work conducted under this Agreement

6. Indemnity

To the extent not prohibited by law, the Contractor indemnifies FCNSW against any claims, or any loss suffered or incurred by FCNSW arising out of or in connection with the failure of the Contractor, or any subcontractors or other persons engaged by the Contractors, to discharge the duties imposed under WHS Laws or otherwise comply with its obligations under this Schedule.



SCHEDULE 6 - CASUAL PLANT HIRE RATES FOR FIRE FIGHTING

Equipment Type	Machine Size Specification	Rate \$/hour (Exclusive of GST)
Harvester		
Skidder		
Grader		
Truck and float		

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

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