



HAULAGE AGREEMENT

NT16-001

Contractor: Consortium of Greensill Bros Pty Ltd, Brian Smith Timber Transport Pty Ltd and Hoffmans Haulage Pty Ltd

Production Area: NSW North Coast Hardwood

Commencement: 1 March 2016

Term: 5 Years

CONTENTS

1.	DATE OF AND PARTIES TO AGREEMENT	5
2.	RECITALS	5
3.	INTERPRETATION	5
3.1.	Definitions	5
3.2.	Construction	10
3.3.	Headings	11
4.	SCOPE OF AGREEMENT	12
4.1.	Subject to the terms of this Agreement:	12
5.	DURATION	12
5.1.	Term	12
6.	COMPLIANCE	12
6.1.	Contractor Compliance	12
6.2.	Right to Enter	13
7.	CONTRACTOR REPORTING	13
7.1.	Daily Reporting	13
7.2.	Monthly Reporting	13
7.3.	Annual Reporting	13
7.4.	Adhoc Safety and Environmental Reporting	13
7.5.	Adhoc Compliance Reporting	14
7.6.	Failure to Report	14
8.	FCNSW REPORTING	14
8.1.	Quarterly Reporting	14
9.	PLANS	15
9.1.	Annual Plan	15
9.2.	Delivery Schedule	15
9.3.	Harvesting Plan	15
9.4.	Amendments to Plans	16
10.	EMPLOYEES, SERVANTS, AGENTS AND SUBCONTRACTORS	16
10.1.	Training and Licenses	16
10.2.	Sub Contractors	16
10.4.	Industrial Agreement	17
10.5.	Related Agreements	17
11.	INSURANCE	18
11.1.	Insurance Requirements	18
12.	EQUIPMENT AND GPS REQUIREMENTS	18
12.1.	Equipment Requirements	18
12.2.	Equipment Amendments	18
13.	OPERATIONS	19
13.1.	Supervision	19
13.2.	Before Haulage Operations Commence	19
13.3.	Loading Operations	19
13.4.	Cleaning up of Log Landings	20
13.5.	Haulage Operations	20
13.6.	Incorrect Product Destination	20
13.7.	EDD	21
13.8.	Completion of Haulage Operations	21
13.9.	Long distance truck driver fatigue	21
14.	RATES AND PAYMENTS	21

14.1.	Haulage Rates.....	21
14.2.	Quantity Determination for Payment.....	22
14.3.	Cross Loading.....	Error! Bookmark not defined.
14.4.	Review of Road Class or Haulage Rates.....	23
14.5.	Goods and Services Tax.....	23
14.6.	Liquidated Damages.....	24
14.7.	Review of Haulage Rates.....	24
14.8.	Amendment to an Indicator.....	24
14.9.	Special Review.....	24
14.10.	Centralised Dispatch.....	Error! Bookmark not defined.
14.11.	Continuous Improvement.....	25
14.12.	Haulage rates outside of Base Haulage Rates.....	25
14.13.	Deductions from Haulage Rate Payments.....	25
15.	SUSPENSION	25
15.1.	Suspension by FCNSW.....	25
15.2.	Suspension by the Contractor.....	26
15.3.	Consequence of Suspensions.....	26
16.	TERMINATION	27
16.1.	By FCNSW.....	27
16.2.	By the Contractor.....	27
16.3.	Consequences of Termination.....	28
17.	TAKING OVER CONTRACTOR'S OBLIGATIONS	28
17.1.	Contractor unable to perform.....	28
18.	GENERAL	28
18.1.	Non Compliance.....	28
18.2.	Assignment.....	28
18.3.	Damage to Property.....	29
18.4.	Indemnity and liability.....	29
18.5.	Force Majeure.....	29
18.6.	Applicable Law.....	30
18.7.	Settlement of Disputes.....	30
18.8.	Costs and Expenses.....	31
18.9.	Severance.....	31
18.10.	Confidentiality.....	31
18.11.	Liability for loss of log products.....	31
18.12.	Rights of Other Persons.....	31
18.13.	Whole Agreement.....	31
18.14.	Variation of Conditions.....	31
18.15.	Waiver.....	32
18.16.	Cooperation.....	32
18.17.	Notice.....	32
18.18.	Government Information (Public Access) Act 2009.....	32
19.	EXECUTED AS AN AGREEMENT	34
	SCHEDULE 1 – DETAILS	36
	Item 1 – Date of Agreement.....	36
	Item 2 – Contractor Details.....	36
	Item 3 – Commencement Date.....	37
	Item 4 – Term.....	37
	Item 6 – Base Annual Quantity.....	37
	Item 8 – Area of Supply and Priority Area of Supply.....	38
	SCHEDULE 2 - EQUIPMENT	36
	Item 1 – Equipment and Equipment Specification.....	40
	Item 2 – GPS Data Requirements.....	43
	SCHEDULE 3 – HAULAGE RATES	45

Item 1 – Base Haulage Rates (\$/GMT)	45
Item 2 – Road Class Surcharges (\$/GMT)	52
Item 3 – Adjustment of Haulage Rates by reason of Variation in GCMLs	53
SCHEDULE 4 – RATE REVIEW MECHANISM	56
SCHEDULE 5 – PERFORMANCE ASSESSMENT	59
Item 1 – Contractors Performance Assessment	59
SCHEDULE 6 – DELIVERY DATA	60
SCHEDULE 7 – CODE OF PROCEDURE	

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 **CONTRACTOR** whose details appear in **Item 2 Schedule 1** ("the Contractor").

2. RECITALS

FCNSW has, and routinely enters into Delivered Sale Supply Agreements with timber processors pursuant to which FCNSW will sell Log Products to the timber processors. FCNSW has requested the Contractor to undertake the haulage of Log Products to be sold to the timber processors from the specified Area of Supply which the Contractor has agreed to do upon the terms and subject to the conditions contained in this Agreement.

3. INTERPRETATION

3.1. Definitions

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

"Adjustment Note" has the same meaning as in the A New Tax System (Goods and Services) Tax Act 1999.

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

"Actual Annual Quantity" for a Year means the greater of the actual quantity made available for Haulage Operations by the Contractor during the Year or the actual quantity delivered to Product Destinations by the Contractor during the relevant Year.

"Annual Plan" means a statement prepared by FCNSW setting out the indicative Harvesting Units that FCNSW proposes the Contractor undertake Haulage Operations during the Year to which the Annual Plan applies.

"Area of Supply" means the forests from which FCNSW proposes the Contractor conduct Haulage Operations, the boundaries of which are described by words in **Item 8 Schedule 1**.

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

"Base Annual Quantity" for a Year means the quantity of Haulage Operations to be undertaken by the Contractor as proposed by FCNSW during that Year as specified in **Item 6 Schedule 1** as that quantity may be amended from time to time in accordance with this Agreement.

"Base Haulage Rates" means the rates that are specified in **Item 1 Schedule 3** as the Base Haulage Rates as amended from time to time in accordance with this Agreement.

"Base Term" means the term specified in **Item 4 Schedule 1**.

"Business Days" means the days Monday to Friday inclusive but excluding Public Holidays.

"Chain of Responsibility Laws" means all applicable laws relating to road transport in New South Wales including those in respect of;

- (a) Load
- (b) Mass
- (c) Dimension

- (d) Load Restraint, and
- (e) Fatigue management.

"Chain of Responsibility Requirements" means the requirements set out in **Schedule 8**.

"Code of Procedure" means the Code of Procedure attached as **Schedule 7** as amended by FCNSW from time to time following notice to the Contractor.

"Codes" means the Code of Procedure and the Forest Practices Code, as amended by FCNSW from time to time following notice to the Contractor, and the Codes of Practice (Health and Safety).

"Codes of Practice (Health and Safety)" means accepted Codes of Practice under Work, Health and Safety legislation

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

"Compartment" means an area of land identified by FCNSW on a Harvest Plan as a Compartment.

"Contractor" means the Contractor whose details are set out in **Item 2 Schedule 1**, and includes all employees, servants and agents of the Contractor.

"Contractor Participant" means each haulage company comprising the Contractor.

"Contractor Performance Assessment" means a rating system used by FCNSW in its sole discretion, which must be exercised reasonably, to monitor the Contractors performance of its obligations under the Agreement as described in **Item 1 Schedule 5**, as amended by FCNSW from time to time following notice to the Contractor.

"Contractor GPS Portal" means the Contractor's portal on the GPS Service Provider's website that provides access to information required in accordance with the GPS Data Requirements.

"Cost Item" see **Schedule 4**.

"Delivery Data" means all electronic data used and captured by haulage Equipment, including that relating to routes travelled as measured by global position systems, engine management system information or other related data as specified in **Schedule 6**, as amended by FCNSW from time to time following notice to the Contractor.

"Delivered Sale" means a log sale to a buyer in which FCNSW engages contractors to undertake the harvesting and haulage operations necessary to deliver the logs to the buyer.

"Delivery Schedule" means a schedule prepared by FCNSW specifying;

- i. the quantities and categories of Log Products;
- ii. the Harvesting Units from which the Log Products are to be hauled;
- iii. the Product Destinations to which the Log Products are to be hauled;
- iv. any specific restrictions or targets on hourly deliveries to customers to assist in even wood flows and reduce congestion; and
- v. the Period to which it applies.

"Driver" means a person engaged or employed by the Contractor to drive a Vehicle.

"EDD System" or **"Electronic Delivery Docket System"** means a system that captures, stores and transfers timber sales and production data electronically rather than by manually recorded paper delivery dockets being a system that requires specific hardware including; hand held field computers, printers, geographic positioning systems, modems and data storage devices, to operate.

"Electronic Delivery Data" means the log production and sales data entered into the EDD system by the Contractor or FCNSW.

"Equipment" includes all items specified in Schedule 2.

"Exceptional Change" means a change of more than five percent (5%) in the total annual bona fide expenses of the Contractor incurred in undertaking Haulage Operations which is not recognised in the Rate Review Mechanism.

"Expiry Date" means the date specified in Item 4 Schedule 1.

"FCNSW's Contractor Portal" means the Forestry Corporation Customers and Contractors Portal accessible on FCNSW's internet site.

"Force Majeure" means an event (other than the payment of money) arising from an act of God, industrial dispute, act or omission of government or government department or instrumentality (excluding FCNSW or any refusal to grant any necessary harvesting plan approval or delay in granting that approval), war, sabotage, riot, civil disobedience, epidemic, disease, fire, explosion, failure of power supply, accident, natural disaster, calamity or unlawful act by other person, or any similar cause.

"Forest Practices Code" means the Forest Practices Code Part 1 Timber Harvesting in Forests NSW Plantations dated July 1995 and/or the Forest Practices Code Part 2 Timber Harvesting in Native Forests dated February 1999, whichever is applicable, published by FCNSW and includes all amendments and updates subsequently made from time to time to such documents.

"General Access Vehicles" means truck and trailer combinations which are less than 19m in length.

"Global Positioning System" or "GPS" means a system capable of capturing in GPS exchange file format (GPX) the data listed in the GPS Data Requirements.

"GPS Data Requirements" means requirements set out in Item 2 Schedule 2.

"GPS Service Provider" means the entity set out in Item 2 Schedule 2 as the provider of GPS vehicle tracking and related services necessary to enable the Contractor to comply with the GPS Data Requirements.

"GPS Unit" means the make and model of GPS unit set out in Item 2 Schedule 2.

"Gross Combination Mass Limit" means the greatest possible sum of the maximum loaded mass of a Vehicle that may lawfully be carried by it as prescribed by the Heavy Vehicle (Mass Dimension and Loading) Regulation (NSW).

"GST" has the same meaning as in the GST legislation.

"GST legislation" means the A New Tax System (Goods and Services Tax) Act 1999 and any associated legislation.

"Harvesting Operations" means the felling of trees, servicing of trees into Log Products and Residue Products, extraction of trees or Log Products and Residue Products to Log Landings, segregation and stockpiling of Log Products and Residue Products at the Log Landing, and ancillary works including Loading Operations, Salvage Operations, track and Log Landing construction, and the moving of Equipment between Harvesting Units.

"Harvesting Plan" means a plan prepared by FCNSW which contains site-specific information to be used, and instructions to be followed when carrying out Harvesting Operations and Haulage Operations including road closures, road conditions and the Log Landings at which Log Products will be stockpiled for Haulage Operations.

"Haulage Operations" means transportation of Log Products from the Harvesting Unit to a Product Destination.

"Haulage Rate" means the amount of money payable by FCNSW to the Contractor for the haulage of Log Products to a Product Destination calculated on the basis of a Tonne.

"Haulage Road Class" means a classification of a road by reference to the degree of difficulty in hauling Log Products over the road. The Haulage Road Classes and the characteristics of each class are more particularly described in Item 2 of Schedule 3.

"Haulage Scheduling Manager" means a person nominated by the Contractor to represent the Contractor in relation to the scheduling of Haulage Operations under this Agreement.

"Haulage Supervisor" means a person nominated by each of the Contractor Participants to represent the nominating Contractor Participant at each site where Haulage Operations are being carried out under this Agreement.

"Harvesting Unit" means an area of land comprising a Compartment or Compartments identified by FCNSW as a Harvesting Unit.

"Indicator" see Schedule 4.

"Indicator Rate" see Schedule 4.

"Incident Report" means a report of a Reportable Incident completed by the Contractor in a form acceptable to FCNSW.

"Incident Investigation Report" means a report of an investigation of a Reportable Incident completed by the Contractor in the form specified by FCNSW as amended by FCNSW from time to time following notice to the Contractor.

"Insolvency Event" means in respect of a person:

- a) a receiver, manager, receiver and manager, trustee, administrator, controller or similar officer being appointed in respect of the person or any asset of the person;
- b) a liquidator or provisional liquidator being appointed in respect of the person;
- c) a moratorium of any debts of the person or an official assignment or a composition or an arrangement (formal or informal) with the person's creditors or any similar proceeding or arrangement by which the assets of the person are subjected conditionally or unconditionally to the control of the person's creditors being ordered, declared or agreed to;
- d) the person becoming, or admitting in writing that it is, or being declared to be insolvent or unable to pay its debts;
- e) any writ of execution, garnishee order or similar order, attachment, distress or other process in an amount exceeding \$10,000,000 (or its equivalent in a foreign currency) being made, levied or issued against or in relation to any asset of the person (which is not stayed, withdrawn or satisfied within 14 days of when it is made, levied or issued);
- f) the person suspending payments of its debts generally; or
- g) the person being, or under legislation being presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or claim the subject of a good faith dispute).

"Liquidated Damages Formula" means the formula set out in Item 5 Schedule 3.

"Log Products" means the logs detailed in the Product Specifications and as amended by FCNSW from time to time following notice to the Contractor.

"Log Landing" means an area where Log Products or other types of logs are assembled prior to loading onto a truck.

"Lost Time Incident" means an incident during the performance of this Agreement that results in a fatality, permanent disability or injury that requires a worker to be absent from duty for one full shift or greater.

"Mandatory Equipment Specifications" includes the specifications and functions for Equipment identified as Mandatory Equipment Specifications in Schedule 2.

"Market Collapse" means:

- a) a change to or deterioration in the market for timber products manufactured from Log Products intended to be hauled under this Agreement to the extent that it causes a termination, suspension or modification to FCNSW' obligations to supply the Log Products under a Supply Agreement; or
- b) any other termination, suspension or modification of FCNSW' obligations to supply the Log Products under a Supply Agreement for reasons other than default on FCNSW part.

"Market Rates" means market rates paid for haulage operations in similar circumstances and terms and conditions to Haulage Operations conducted under this Agreement.

"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 incident notifiable under Health and Safety legislation to the regulator (Work Cover NSW). This includes death serious injury or illness of a person or a dangerous incident.

"Parties" means FCNSW and the Contractor.

"Period" in relation to a Delivery Schedule means the period specified by FCNSW as period to during which the Delivery Schedule applies.

"Product Destination" means the destination to which Log Products are to be hauled during Haulage Operations.

"Product Specifications" means the specifications for Log Products detailed in the Code of Procedure.

"Quarter" means each of the three (3) month periods January to March, April to June, July to September and October to December in each Year of this Agreement.

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

"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.

"Rate Advice" means a statement prepared by FCNSW detailing the Haulage Rates applicable to a Harvesting Unit.

"Rate Review" means a review carried out in accordance with clause 14.7.

"Rate Review Mechanism" means the mechanism for calculation changes in the Base Haulage Rates set out in Schedule 4 as may be amended in accordance with this Agreement.

"Reportable Incident" means an event that took place during performance by the Contractor of its obligations under this Agreement that either caused harm or had the potential to cause harm to a person, either at work or not at work but in a FCNSW' workplace or contractor's workplace, including roads used for log haulage.

"Restricted Access Vehicle" means a vehicle that is not a General Access Vehicle.

"Safety Management System" means a documented system for the management of all matters relating to Workplace Health and Safety in accordance with AS/NZS 4801:2001 Occupational Health and Safety Management Systems.

"Smart Phone" means a mobile phone capable of transmitting data including the ability to send and receive e-mails, download and store data, connect to the internet and run third party applications.

"Supply Agreement" means an agreement between FCNSW and a person under which FCNSW agrees to supply and the person agrees to take Log Products that FCNSW intends be hauled by the Contractor under this Agreement.

"Tax Invoice" has the same meaning as in the GST Act.

"Taxable Supply" has the same meaning as in the GST Act and 'taxable supplies' has a corresponding meaning.

"Term" means the duration of this Agreement.

"Threshold Quantity" means eighty percent (80%) of the Base Annual Quantity.

"Trimble WSX Dispatch system" means the Trimble Forestry Logistics vehicle dispatch system with the capacity to provide real time access to information such as customer deliveries, stock, uplift, production, trucking, and dockets, or such similar system as may be agreed to by the parties in writing.

"Tonne" means green metric tonne.

"Traffic Management" means the coordination of road closures or traffic control measures to protect road users from safety hazards associated with Harvesting or Haulage Operations.

"Vehicle" means a truck and trailers used by the Contractor to perform Haulage Operations under this Agreement.

"Week" means a seven (7) day period commencing Sunday midnight.

"Working Days" means Business Days on which Delivered Sale timber processors accept deliveries of Log Products harvested under this Agreement.

"Workplace Fatality" means a fatality that occurs during the driving of a vehicle involved in Haulage Operations either to or from a Harvesting Unit or a Product Destination or during the loading or unloading of the vehicle.

"Year" means a period of twelve (12) months commencing on 1 July.

3.2. Construction

In this document unless the context otherwise requires:

- a) Words importing the singular include the plural and vice versa;
- b) Words importing any gender include the other gender;
- c) References to persons include corporations and bodies politic;
- d) References to a person include the legal personal representative, successors and assigns of that person;
- e) A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- f) References to this or any other document include the document as varied or replaced, and notwithstanding any change in the identity of the parties;
- g) References to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes telex and facsimile transmission;
- h) An obligation of two (2) or more parties shall bind them jointly and severally;
- i) If a word or phrase is defined, cognate words and phrases have corresponding definitions;
- j) References to a person which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or

- body in its place, shall be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable;
- k) References to this document include its Schedules and annexures;
 - l) A reference to anything includes a part of that thing;
 - m) 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;
 - n) A reference to the Contractor shall be a reference to the Contractor Participants jointly and severally.

3.3. Headings

Headings shall be ignored in construing this document.

4. SCOPE OF AGREEMENT

4.1. Subject to the terms of this Agreement:

- 4.1.1 FCNSW agrees to grant the Contractor access to the Area of Supply.
- 4.1.2 The Contractor agrees to carry out Haulage Operations in the Area of Supply to provide Log Products to be used by FCNSW to meet its obligations under the Supply Agreements.
- 4.1.3 FCNSW will pay the Contractor for its services at rates determined under this Agreement.
- 4.1.4 The Contractor 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.
- 4.1.5 Nothing in this Agreement shall be deemed to create a partnership between the Contractor and FCNSW.
- 4.1.6 The Contractor Participants are jointly and severally liable for the performance of the Contractor's obligations under this Agreement.
- 4.1.7 If a condition or term of this Agreement requires or allows FCNSW to consult with, to confer with, to negotiate with, to reach agreement with, to provide an opportunity or a document to, to advise, to direct, to give notice or to otherwise deal with, the Contractor, it will be full and sufficient compliance with that condition or term, and the Contractor will have no claim against FCNSW under this Agreement, if FCNSW only consults with, confers with, negotiates with, reaches agreement with, provides the opportunity or the document to, advises, directs, gives notice to, or otherwise deals with (as the case may be), the Haulage Scheduling Manager.
- 4.1.8 The Contractor will have no claim against FCNSW under this Agreement in relation to any act or omission by FCNSW if the act or omission occurred in accordance with any agreement or arrangement made between FCNSW and the Haulage Scheduling Manager.

5. DURATION

5.1. Term

- 5.1.1 This Agreement will commence on the Commencement Date and, will end on the Expiry Date unless sooner terminated as provided in this Agreement.
- 5.1.2 Neither Party is obliged to renew or extend the Term. Either Party may give the other Party notice of a desire to extend or renew the Term at any time. The Party who receives the notice must respond within thirty (30) days or before the completion of the Term, whichever is the sooner.

6. COMPLIANCE

6.1. Contractor Compliance

- 6.1.1 The Contractor must comply with:
 - a) The Act and all other applicable statutes and subordinate legislation;
 - b) The Work Health and Safety Act 2011, Work Health and Safety Regulations 2011, any relevant Codes of Practice and Australian/International Standards;
 - c) Heavy Vehicle National Law (NSW), Heavy Vehicle National Regulations (NSW), including roadworthy requirements, chain of responsibility, fatigue, vehicle permits and registrations;

- d) The requirements of anybody lawfully having authority in relation to the subject matter of this Agreement;
- e) The Codes;
- f) Any relevant Annual Plan, Delivery Schedule or Harvesting Plan;
- g) The conditions attached to any License issued to the Contractor under the Act or other license or permit issued to the Contractor by a government authority;
- h) Any lawful direction given to the Contractor by an Authorised Person.

6.1.2 The Contractor must ensure that all of its employees, servants, agents or sub-contractors, comply with the terms of this Agreement and in particular the Contractor must ensure that the Haulage Scheduling Manager does not direct the preparation and delivery of a load of Log Products of a certain species or specification to a specific Product Destination other than in accordance with a Delivery Plan or as otherwise directed by FCNSW.

6.2. Right to Enter

The Contractor must permit FCNSW, or its agents and representatives, to enter any site at which the Contractor provides services under this Agreement, without notice, to review, inspect, audit compliance or otherwise observe the Contractor's performance under this Agreement.

7. CONTRACTOR REPORTING

7.1. Daily Reporting

Each day each Contractor Participant must provide any specified Electronic Delivery Data requested by FCNSW and either downloaded from the EDD System or provided in the format specified by FCNSW.

7.2. Monthly Reporting

Each Contractor Participant must throughout the Term have a registered account on FCNSW's Contractor Portal and within five (5) Working Days of the end of each Month the Contractor must access FCNSW's Contractor Portal and correctly enter the Contractor's monthly safety statistics and other information reasonably required from time to time regarding the Contractor's performance of this Agreement.

7.3. Annual Reporting

Each Contractor Participant must each Year, or upon expiration of any insurance policy it is required to hold under this Agreement, access FCNSW's Contractor Portal and correctly enter such information required by FCNSW's Contractor Portal on an annual basis, or upon such expiration, in relation to insurance policies, employee or sub-contractor accreditations and other information reasonably required from time to time regarding the Contractor's performance of this Agreement.

7.4. Adhoc Safety and Environmental Reporting

7.4.1 The Contractor must notify FCNSW:

- a) As soon as practicable of a Workplace Fatality or Notifiable Incident;
- b) Within twenty four (24) hours of a Loss Time Incident or Medical Treatment Incident.

7.4.2 Within seven (7) days of a Reportable Incident or a Near Miss, the Contractor must forward a completed Incident Report and if requested by FCNSW an Incident Investigation Report within twenty one (21) days. FCNSW may request to participate in or observe the Contractor's investigation, or undertake its own investigation. The Contractor must assist FCNSW to complete its own investigation.

- 7.4.3 If requested by FCNSW, the Contractor must truly and correctly complete and provide to FCNSW any audit checklist supplied by FCNSW regarding the Contractor's compliance with prescriptions specified in the relevant Harvesting Plan and the Codes.

7.5. Adhoc Compliance Reporting

- 7.5.1 If requested in writing by FCNSW the Contractor must within seven (7) days of being requested to do so provide FNSW with certified copies, or other evidence as reasonably required, regarding the following items;

- a) the Contractors compliance with the Agreement;
- b) any relevant licenses, permits, approvals or operator accreditations;
- c) compliance of the Equipment with the operator protective structures standards specified by FCNSW;
- d) currency of any insurances including any certificates of currency required under this Agreement;
- e) the details of the industrial award(s) or enterprise agreement(s) for the Contractor's employees and/or any sub-contractors, agents or employees engaged in the performance of this Agreement;
- f) the complete details of the Contractor's Safety Management System;
- g) driver delivery timetables, driver work diaries and driver fatigue management plans;
- h) relevant approvals and authorizations under fatigue or mass management schemes;
- i) Delivery Data; and
- j) any other relevant documentation evidencing compliance with this Agreement

- 7.5.2 If requested by FCNSW the Contractor must provide trucks and trailers operating under this Agreement for inspection by suitably qualified inspectors to ensure roadworthy compliance with the NSW Road Transport Act 2013 and the Road Transport (Vehicle Registration) Regulation 2007. FCNSW may request the results of those inspections and the Contractor must provide a copy of those results within 7 days of that request.

7.6 Trimble WSX Dispatch system

- 7.6.1 The Contractor must throughout the Term:

- (a) use the Trimble WSX Dispatch system in relation to the Haulage Operations conducted under this Agreement;
- (b) do all things necessary to provide FCNSW with unrestricted real time access to the data generated by its use of the Trimble WSX Dispatch system.

7.7. Failure to Report

If in FCNSW reasonable opinion, the Contractor has not complied with any of the requirements of clause 7, and despite any other provision of this Agreement and without limiting FCNSW rights to exercise any other remedy in relation to the breach, FCNSW may;

- 7.7.1 withhold payment of any money due to the Contractor under this Agreement until the breach is remedied; and
- 7.7.2 require the Contractor to pay FCNSW reasonable costs, expenses and losses arising from the noncompliance including expenses and losses associated with identifying and rectifying errors or omissions in information.

8. FCNSW REPORTING

8.1. Quarterly Reporting

- 8.1.1 FCNSW must provide the Contractor with the results of the Contractor Performance Assessment within thirty (30) days of the end of each Quarter.
- 8.1.2 FCNSW may from time to time, following consultation with the Contractor, vary the Contractor Performance Assessment components and weightings. Any variation can only apply prospectively.
- 8.1.3 If the Contractor disputes that a Contractor Performance Assessment is grossly inaccurate then the parties must meet to investigate the reported inaccuracy and negotiate in good faith to jointly rectify the discrepancy.

9. PLANS

9.1. Annual Plan

- 9.1.1 FCNSW will email the Contractor an Annual Plan for each Year prior to the commencement of the Year to which it applies, except for the first Year, where it will be provided at the Commencement Date.
- 9.1.2 The parties agree that each Annual Plan sets out indicative information that is subject to variation. While FCNSW will endeavour to provide the best information available to assist the Contractor to plan its operations, no guarantee is given as to either the accuracy of the information or the scope of Haulage Operations indicated by an Annual Plan.
- 9.1.3 The quantity of Log Products scheduled in an Annual Plan must not exceed one hundred and fifteen percent (115%) of the Base Annual Quantity unless otherwise agreed in writing between the parties.

9.2. Delivery Schedule

- 9.2.1 Prior to Friday 7pm preceding the commencement of each Period, FCNSW will email the Contractor the Delivery Schedule for the Period. If a Delivery Schedule is not provided for any Period, the last Delivery Schedule previously provided by FCNSW shall apply for that Period.
- 9.2.2 FCNSW will use reasonable endeavours, subject to the limitations imposed by its commercial interests, changes in the demand for Log Products by its customers and the prevailing weather conditions (including wet weather and periods of high fire danger), to:
 - a) make available the Base Annual Quantity and to do so in approximately equal quantities each Period throughout the Year for haulage by the Contractor; and
- 9.2.3 Each Period the Contractor must enter upon such part or parts of the Area of Supply as specified by FCNSW in the Delivery Schedule, with all necessary workmen and Equipment and carry out the Haulage Operations in the Delivery Schedule for that Period.
- 9.2.4 FCNSW may, after consultation with the Contractor, make amendments to a Delivery Schedule to meet the reasonable requirements of a Supply Agreement holder.
- 9.2.5 The quantity of Log Products scheduled in the sum of all Delivery Schedules for a Quarter must not exceed thirty percent (30%) of the Base Annual Quantity for that Quarter unless otherwise agreed in writing between the parties.

9.3. Harvesting Plan

- 9.3.1 Before the commencement of Haulage Operations from a Harvesting Unit:
 - a) FCNSW must ensure that Harvesting Plans are prepared and issued to the Contractor;
- 9.3.2 The Contractor must comply with any relevant and reasonable changes to instructions set out in a Harvesting Plan by FCNSW during Haulage Operations from a Harvesting Unit.

9.4. Amendments to Plans

If timber resources in any part of the Area of Supply are damaged or destroyed by fire, disease or other cause or are otherwise affected by Force Majeure or if a Market Collapse occurs which is deemed to be a Force Majeure event for the purposes of this Agreement, or weather or other conditions cause a Harvesting Unit or units to become inoperable in accordance with the Forests Practices Code, FCNSW may by notice in writing to the Contractor, amend the current Annual Plan and any Delivery Schedules to reflect changed quantities, reasonable alternate areas of supply and Harvesting Units.

10. EMPLOYEES, SERVANTS, AGENTS AND SUBCONTRACTORS

10.1. Training and Licenses

10.1.1 The Contractor and each Contractor Participant must obtain and hold any licence required under the Act for it to conduct Haulage Operations under this Agreement.

10.1.2 The Contractor and each Contractor Participant must ensure that all its employees, servants, agents and subcontractors engaged in work under this Agreement are properly supervised, trained and hold relevant accreditation for:

- (a) the Equipment which they operate;
- (b) the tasks which they perform; and
- (c) the risks and processes for managing risks associated with work under this Agreement.

10.1.3 The Contractor and each Contractor Participant must ensure its employees, servants and subcontractors obtain and keep current all licenses, permits and approvals required for or in relation to the performance of the Contractor's obligations under this Agreement, inclusive of any conditions attached to those licenses.

10.1.4 The Contractor must ensure that all Drivers:

- a) are at all times medically fit to perform Haulage Operations and all necessary ancillary work under this agreement and do not work if not so medically fit;
- b) when required by FCNSW, consent to and attend a medical examination on a medical practitioner nominated by FCNSW (at FCNSW cost);
- c) consent to FCNSW being advised by the medical practitioner as to the fitness of the Driver to the work;

and in complying with these obligations, the Contractor is responsible for complying with all the applicable privacy laws and regulations regarding the Drivers personal information.

10.2. Sub Contractors

10.2.1 The Contractor or a Contractor Participant may with the prior written approval of FCNSW engage one or more sub contractors to carry out some or all of the obligations of the Contractor under this Agreement provided always that the Contractor must:

- a) remain responsible and liable at all times to carry out its obligations under this Agreement;
- b) ensure that each and every sub contractor is familiar with and complies with the terms and conditions of this Agreement and the obligations of the Contractor;
- c) obtain or possess the licenses or permits required under clause 10.1.

10.2.2 The Contractor and each Contractor Participant must ensure each sub contractor and the persons engaged by the sub contractor are covered by the Contractor's insurances as required under this Agreement, or have established separate current policies of insurance in identical terms to those required by this Agreement.

10.2.3 Notwithstanding any approval given by FCNSW, the Contractor shall be liable for the acts, defaults or neglects of any sub-contractor as fully as if they were the acts, defaults or neglects of the Contractor or the employees or agents of the Contractor.

10.3 Further Sub-Contracting

The Contractor and each Contractor Participant must ensure that any sub-contractor engaged by it to carry out its obligations under this Agreement does not further sub-contract the work.

10.4. Industrial Agreement

10.4.1 The Contractor and each Contractor Participant must comply with the terms and conditions of any industrial award or enterprise agreement relevant to its employees engaged in the performance of this Agreement.

10.4.2 The Contractor and each Contractor Participant must ensure that any sub-contractor or agent engaged by it in the performance of this Agreement complies with the terms and conditions of any industrial award or enterprise agreement relevant to the sub-contractor's or agent's employees.

10.5. Related Agreements

Notwithstanding anything to the contrary in this Agreement, where:

10.5.1 the Contractor is engaged under other agreements with FCNSW for harvesting or haulage; and

10.5.2 the Actual Annual Quantity for that Year is less than the Threshold Quantity; due, directly or indirectly, to its own performance under its other harvesting or haulage agreements with FCNSW; then

10.5.3 the Contractor shall have no claim against FCNSW, including payments under clause 14.6, related to the quantity of Log Products under this Agreement which resulted from under performance under its other harvesting or haulage agreements with FCNSW.

10.6 Chain of Responsibility Requirements

The Contractor:

10.6.1 must at all times comply with the Chain of Responsibility Laws and Chain of Responsibility Requirements, irrespective of Gross Combination Mass Limit of the Vehicle;

10.6.2 Will ensure that its Drivers operate Vehicles allocated to carry out the haulage works only on roads on which such vehicles are permitted to travel and otherwise in accordance with Applicable Laws;

10.6.3 warrants that it has in place appropriate policies and procedures with respect to the Chain of Responsibility Laws and will undertake sufficient training of its Drivers, employees and subcontractors to ensure compliance with the Chain of Responsibility Laws.

10.6.4 will promptly advise FCNSW of any facts or circumstances which come to its attention which may give rise to any breach of Applicable Laws, including Chain of Responsibility Laws, in connection with the haulage works.

10.6.5 will ensure that its Drivers maintain work diaries and prepare fatigue management plans as required by the Chain of Responsibility Laws.

10.7 Vehicle Requirements

10.7.1 The Contractor must maintain at its cost all Vehicles to a roadworthy, safe and fully operable state.

10.7.2 The Contractor will allocate to carry out the Haulage Operations Vehicles which:

- (a) are suitable (as determined by FCNSW) for the haulage of logs,
- (b) are maintained in a roadworthy condition;
- (c) are maintained and presented in a clean condition inside and out;
- (d) meet any other reasonable requirements of FCNSW.

11. INSURANCE

11.1. Insurance Requirements

11.1.1 The Contractor or each Contractor Participant must take out and maintain throughout the duration of this Agreement, with a licensed insurance company, insurance of the following kinds:

- a) Workers compensation insurance to the extent required by the law of the State of New South Wales.
- b) Public liability insurance in such sum as shall be specified by FCNSW (but being a minimum of twenty million dollars (\$20,000,000.00) per claim.

11.1.2 The insurance in clause 11.1.1(b) must note the interest of FCNSW in the policy.

12. EQUIPMENT AND GPS REQUIREMENTS

12.1. Equipment Requirements

12.1.1 The Contractor or each Contractor Participant must own, hire or lease and meet all operating costs including installation and maintenance of the Equipment and Mandatory Equipment Specifications specified in Schedule 2, and any other equipment necessary to perform the work under this Agreement.

12.1.2 The Equipment must comply at all times with any Mandatory Equipment Specifications and with any specification reasonably nominated FCNSW.

12.1.3 The Equipment comprising haulage vehicles and trailers, and the operator of that Equipment, must as far as reasonable be clean, neat and tidy while performing this Agreement, so as to project a positive image of FCNSW's operations.

12.2. Equipment Amendments

Any additions to or deletions from the Equipment or Mandatory Equipment Specifications must be approved by FCNSW prior to their use in Haulage Operations and Schedule 2 amended to reflect their addition or deletion.

12.3 GPS Requirements

The Contractor must at its own cost and for the Term:

12.3.1 within one month from the commencement of this contract:

- (a) acquire, install, use and maintain the GPS unit in all haulage vehicles used in the conduct of Haulage Operations under this Agreement;
- (b) establish and maintain the GPS Service Provider as the entity to provide those GPS services necessary to enable the Contractor to comply with the GPS Data Requirements;
- (c) provide FCNSW with access to the data specified by the GPS Data Requirements by providing FCNSW unrestricted access to the Contractor GPS Portal; and

12.3.2 comply with the GPS Data Requirements.

13. OPERATIONS

13.1. Supervision

13.1.1 Each Contractor Participant must appoint a competent person or persons as a Haulage Supervisor or Haulage Supervisors to, when requested by FCNSW, represent the nominating Contractor Participant and to be present on site where any Haulage Operations under the Agreement are taking place and, if required by FCNSW, at such other places at which activities relating to the Agreement are taking place.

13.1.1A The Contractor must appoint a competent person or persons to manage scheduling services as a Haulage Scheduling Manager to, when requested by FCNSW, represent the Contractor and to interact with FCNSW regarding the scheduling and performance of Haulage Operations under this Agreement.

13.1.2 The Contractor must notify FCNSW in writing of the name of any appointed Haulage Supervisor or the Haulage Scheduling Manager and of any subsequent changes.

13.1.3 The Contractor must replace any Haulage Supervisor or the Haulage Scheduling Manager if requested to do so by FCNSW (acting reasonably) on the grounds that the Haulage Supervisor or Haulage Scheduling Manager is not performing the role in accordance with this Agreement and/or demonstrating an appropriate level of competence.

13.1.4 The Haulage Supervisor is deemed to be authorised by the Contractor Participant that nominated the relevant Haulage Supervisor to make decisions and to receive directions from FCNSW on the Contractor Participant's behalf on all matters relating to the conduct of Haulage Operations under this Agreement.

13.1.5 FCNSW must ensure that an Authorised Person is contactable by the Contractor during normal business hours on Business Days to discuss any matter regarding Haulage Operations under this Agreement.

13.2. Before Haulage Operations Commence

13.2.1 Prior to the commencement of Haulage Operations from a Harvesting Unit the parties must jointly review roads in State Forests that are proposed to be used to ensure:

- (a) their suitability for use by the vehicle configurations proposed to be used; and
- (b) that any proposed road closures do not unnecessarily inhibit the haulage of Log Products; and
- (c) that the proposed haulage route represents the lowest cost option to FCNSW.

13.2.2 Prior to the commencement of Haulage Operations from a Harvesting Unit the Contractor must ensure that all roads on proposed haulage routes are safe for use by the vehicle configurations proposed to be used. Nothing in this Agreement requires the Contractor to use, and the Contractor must not use, any haulage route which, in the reasonable opinion of the Contractor, is unsafe for usage by particular vehicle configurations.

13.2.3 The Contractor and each Contractor Participant must obtain all necessary licenses, permits and approvals from relevant road authorities.

13.3. Loading Operations

13.3.1 The Contractor must cooperate with FCNSW or any contractor engaged by FCNSW to harvest Log Products ("the Harvesting Contractor") in the loading of Log Products to be hauled under this Agreement.

13.3.2 If agreed between the Contractor and the Harvesting Contractor, the Contractor may use the Harvesting Contractor's loading equipment to load trucks, provided the Contractor's personnel have the correct accreditation and licence to do so.

13.3.3 The Contractor must not unreasonably withhold agreement to load trucks under clause 13.3.2.

13.3.4 FCNSW must use reasonable endeavours to assist the Contractor to achieve turnaround times not more than forty five (45) minutes from the time the truck is positioned to enable loading to commence.

13.3.5 Loading of trucks will be conducted during hours specified by the Harvesting Plan.

13.4. Cleaning up of Log Landings

13.4.1 Where instructed by FCNSW, the Contractor must remove all Log Products including part loads from Individual Log Landings in each Harvesting Unit before ceasing Haulage Operations from the Harvesting Unit.

13.4.2 If the Contractor fails to follow FCNSW instruction in clause 13.4.1, FCNSW may elect to:

- a) employ another person to perform the necessary work and recover the costs and expenses of employing that person against the Contractor; or
- b) recover the lost value of the Log Products from the Contractor.

13.5. Haulage Operations

13.5.1 The Contractor must not use any haulage route prohibited by FCNSW by notice in writing or, in relation to Haulage Operations from a particular Harvesting Unit, any route not identified to be used for in the Haulage Operations Plan for the particular Harvesting Unit.

13.5.2 The Contractor will structure Haulage Operations to facilitate an even flow of deliveries to Product Destinations and at FCNSW request implement one or more of the following actions:

- a) staggering of individual truck commencement times or fleet commencement times;
- b) structuring deliveries to avoid congestion or target notified times to specific Product Destinations;

13.6. Incorrect Product Destination

13.6.1 FCNSW may require the Contractor to promptly collect and deliver Log Products which it has delivered to the wrong Product Destination, at the Contractor's cost.

13.6.2 If the Contractor is unable or refuses to perform its obligations under this Agreement FCNSW may after consultation with the Contractor elect to employ another person to perform this work and recover all reasonable costs and expenses of employing that person against the Contractor.

13.6.3 The Contractor must ensure that log delivery dockets are correctly completed for all Log Products in accordance with the Code of Procedure.

13.6.4 If in FCNSW' reasonable opinion, the Contractor has delivered Log Products to the wrong Product Destination or has not complied with the Code of Procedure as it relates to log delivery dockets, FCNSW may require the Contractor to pay FCNSW reasonable costs, expenses and losses arising from the non-compliance or incorrect delivery including those costs, expenses and losses associated with investigating the non-compliance or incorrect delivery and managing the process to rectify it.

13.7. EDD

13.7.1 At FCNSW's request the Contractor must use FCNSW's EDD System.

13.7.2 If instructed by FCNSW to use purpose built equipment use in an EDD System the Contractor must use, install, maintain and keep secure those computer hardware devices supplied by FCNSW that are reasonably necessary to support the haulage component of the FCNSW's EDD System.

13.7.3 Subject to clause 13.7.4, FCNSW will supply, install and meet all costs associated with the EDD System equipment except where the replacement or maintenance of the EDD System equipment is due to the Contractors negligence, in which case the costs will be borne by the Contractor.

13.7.4 Where FCNSW requires the Contractor to use Smart Phones as part of the EDD System then all costs relating to the Smart Phone acquisition and use will be at the expense of the Contractor.

13.8. Completion of Haulage Operations

13.8.1 FCNSW must use its best endeavours to inspect and assess compliance with the required standard in each Compartment or Harvesting Unit within two (2) Working Days after completion of Haulage Operations in that area.

13.8.2 FCNSW must inform the Contractor as soon as reasonably practicable after assessment of a completed Compartment or Harvesting Unit of any failure to comply with the required standard. Prior to this assessment FCNSW must promptly inform the Contractor during Haulage Operations of any non-compliance issues that it is aware of. FCNSW must not withhold information from the Contractor leading to a build-up of issues upon completion.

13.8.3 The Contractor must as soon as reasonably practicable after being informed remedy any failure to comply with the required standard.

13.8.4 If the Contractor fails to remedy any failure to comply with the required standard within a period that FCNSW considers reasonable in the circumstances FCNSW may elect to employ another person to perform the necessary work and recover the costs and expenses of employing that person against the Contractor.

13.9. Long distance truck driver fatigue

13.9.1 The Contractor warrants that it is not and it will not at any time during the Term become a self-employed carrier in relation to any of the Haulage Operations carried out by it under this Agreement

13.9.2 FCNSW may from time to time request and the Contractor must promptly produce to FCNSW in relation to any driver employed by the Contractor or a Contractor Participant who will transport Log Products under this Agreement:

- (a) delivery timetables for the driver;
- (b) the driver fatigue management plan and driver work diaries for the driver; and
- (c) any other information to evidence the Contractor's compliance with the Heavy Vehicle National Law (NSW) regarding fatigue, or that may assist FCNSW to comply with its obligations under those requirements and that legislation.

14. RATES AND PAYMENTS

14.1. Haulage Rates

- 14.1.1 Within five (5) Working Days after the commencement of Haulage Operations from a Harvesting Unit, FCNSW must, after consultation with the Contractor;
- (a) determine the Haulage Road Classes and Haulage Rates in accordance with the Haulage Rate Schedule for Log Products hauled from that Harvesting Unit in accordance with Schedule 4;
 - (b) advise the Contractor in writing of the appropriate Haulage Rates applying to the Harvesting Unit by the issue of a rates advice.
- 14.1.2 Haulage Rates for poles greater than 14m long will be calculated after applying a 10% increase to the Base Haulage Rates.
- 14.1.3 Where the Contractor is required to haul poles greater than 14m in length FCNSW will cover the reasonable costs incurred by the Contractor if the Contractor is required to use escort vehicles on public roads, provided;
- (a) the relevant load of poles for which escort vehicles are necessary is comprised of at least 75% of poles greater than 14m in length, and
 - (b) the Contractor provides to FCNSW any information necessary for FCNSW to verify the reasonableness of the costs.
- 14.1.4 At the conclusion of each calendar month FCNSW must calculate the payment due to the Contractor for Haulage Operations during the month by applying the relevant Haulage Rates to the quantity of Log Products delivered to Product Destinations during the month.
- 14.1.5 FCNSW must pay the Contractor any payment referred to in clause 14.1.4 within twenty one (21) days of the end of the calendar month to which it relates by payment into such account or account as the Contractor may from time to time nominate in writing signed by all the Contractor Participants provided;
- (a) the written nomination by the Contractor must also specify the ABN (within the meaning of the *A New Tax System (Australian Business Number) Act 1999*) for the purposes of FCNSW's RCTI's in relation to such payments;
 - (b) FCNSW is not required to make any such payment until the Contractor has nominated an account or accounts and ABN or ABNs in accordance with this clause 14.1.5 but must pay any back payment due within 21 days of the written nomination; and
- (c) where the Contractor nominates more than one account, the Contractor must provide FCNSW with prompt notification as to the portion of the payment referred to in clause 14.1.4 that is to be paid into each nominated account.
- 14.1.6 Each month FCNSW must provide a statement to the Contractor detailing the quantity and type of Log Products delivered to Product Destinations during the previous month from each Harvesting Unit, the applicable Haulage Rates, and the amount due and payable to the Contractor for that month.
- 14.1.7 Following the provision of advanced notice in writing to the Contractor, FCNSW may arrange for any part of its obligations under this clause 14.1 to be performed by its nominated agent. Notwithstanding any such arrangement FCNSW remains liable for the performance of the terms of this clause 14.1.

14.2. Quantity Determination for Payment

- 14.2.1 The net weight of any load of Log Products delivered to a Product Destination shall, for the purposes of payment under this Agreement, be the lesser of:

- a) the Gross Combination Mass Limit less the tare weight, or
- b) the actual gross weight less the tare weight.

14.2.2 The quantity of Log Products hauled by the Contractor will be determined in accordance with the Code of Procedure.

14.2.3 The Contractor must, before using any vehicle for Haulage Operations, demonstrate the certified Gross Combination Mass Limit for the vehicle to FCNSW.

14.2.4 FCNSW may from time to time, for the purposes of payment after consultation with the Contractor and written advice to the Contractor, determine a maximum allowable quantity per load based on the relevant legal Gross Combination Mass Limits for vehicle configurations.

14.2.5 Where a measurement unit other than tonnes is to be used as the basis of payment to the Contractor, FCNSW must, prior to the commencement of relevant haulage operations:

- (a) consult with the Contractor regarding an appropriate factor to convert from the proposed unit of measure to tonnes;
- (b) determine an appropriate factor; and
- (c) provide written advice to the Contractor of the factor to be used, the period to which it will apply and other relevant details.

14.3.

Not used.

14.4. Review of Road Class or Haulage Rates

If a party is of the opinion based on reasonable grounds that there was a significant error in the determination of the Haulage Road Class or Haulage Rates from a Harvesting Unit to a Product Destination under clause 14.1.1:

- 14.4.1 that party may request a review of the determination by notice in writing to the other party within twenty eight days (28) days following the completion of haulage from the particular Harvesting Unit;
- 14.4.2 the parties will jointly review the determination as soon as practical after the notice referred to in clause 14.4.1 is received and in doing so will consider, without limitation, actual distance travelled and road conditions from the Harvesting Unit to the Product Destination;
- 14.4.3 if as a result of the review under clause 14.4.1 it is FCNSW's reasonable opinion that a significant error did occur, FCNSW must adjust the next payments due to the Contractor to take into account the effect of the error on all previous relevant payments.

14.5. Goods and Services Tax

14.5.1 Payments made to the Contractor under this Agreement shall be increased by an amount equal to GST liability imposed on the Contractor under the GST Legislation.

14.5.2 FCNSW shall raise RCTI's in respect of all payments made to the Contractor, and RCAN's in respect of all adjustments to those payments, and the Contractor shall not raise Tax Invoices or Adjustment Notes in relation to the supplies made under this Agreement. In addition:

- a) copies of these RCTI's and RCAN's will be sent by FCNSW to the Contractor with the payment or adjustment to which they relate;
- b) the Contractor warrants that it is registered for GST and will notify FCNSW if that registration is cancelled;

- c) FCNSW warrants that it is registered for GST and will notify the Contractor if that registration is cancelled.

14.5.3 FCNSW will notify the Contractor if FCNSW ceases to satisfy any of the requirements of the Commissioner of Taxation's published rulings in relation to RCTI's.

14.6. Liquidated Damages

14.6.1 Each Year FCNSW must make at least the Threshold Quantity available for haulage by the Contractor under this Agreement.

14.6.2 If in any Year of this Agreement for reasons other than Force Majeure or the default of the Contractor, FCNSW makes less than the Threshold Quantity available for haulage by the Contractor, FCNSW must if requested by the Contractor, pay the Contractor a sum of money calculated by the Liquidated Damages Formula, by payment within ninety (90) days after the end of the Year into the account or accounts, and in the proportions, if any, specified in accordance with clause 14.1.5.

14.6.3 Any sum payable to the Contractor under clause 14.6.2 is payable as pre-estimated and liquidated damages and not as a penalty.

14.6.4 The Contractor may not make any claim against FCNSW in relation to its failure to make Haulage Operations work available to it under this Agreement except as provided in this clause 14.6.

14.7. Review of Haulage Rates

14.7.1 The Base Haulage Rates, for each Quarter following the Commencement Date of this Agreement shall be the Base Haulage Rates for the previous Quarter varied by the percentage determined by FCNSW by applying the Rate Review Mechanism.

14.7.2 FCNSW must as soon as practicable after the completion of each Quarter, provide to the Contractor details of the calculations of the Rate Review Mechanism and the resulting amendments to the Base Haulage Rates to apply from the commencement of the next Quarter.

14.7.3 The Base Haulage Rates may also be varied as from the date of any variation to the permissible Gross Combination Mass Limits for Haulage Vehicles as determined by reference to Item 3 of Schedule 3.

14.8. Amendment to an Indicator

If an Indicator is rebased, its calculation varied, ceases to be available, or is superseded by a superior Indicator, FCNSW may replace or vary that Indicator in the Rate Review Mechanism with, or to, one which in FCNSW opinion is an equivalent and suitable alternative.

14.9. Special Review

14.9.1 In the event of an Exceptional Change to the costs of undertaking Haulage Operations under this Agreement, a party may request that a special review be undertaken of the Base Haulage Rates. The parties will confer as soon as reasonably possible after a party requests a special review. A request under this clause may only be made once in any Year. Neither party is obligated to agree to any adjustment to the Base Haulage Rates.

14.9.2 If at any time during the term of this agreement FCNSW estimates that the Actual Annual Quantity for the remainder of the Agreement will be less than 90% of the Base Annual Quantity at the commencement of the Agreement, FCNSW may request that the parties commence good faith negotiations to reach agreement on:

- a) One off costs of disposal of staff and Equipment to reflect the forecast reduction in work;

- b) Amendments to the Base Annual Quantity and Base Haulage Rates to reflect changes to the reduced forecast level of activity.

14.9.3 If the parties are unable to reach agreement within ten (10) Working Days of a Clause 14.9.2 request, FCNSW may determine amendments to Schedule 2 and Schedule 3, provided always that the rates give the Contractor fair and reasonable remuneration for the services provided.

14.9.4 Despite any other consideration the rates agreed under this clause 14.9 must, at all times, remain competitive and must not exceed Market Rates.

14.10. Continuous Improvement

14.10.1 Subject to the terms of this Agreement, the parties will use all reasonable endeavours to achieve continuous improvement and increased efficiency in the manner in which the Haulage Operations are undertaken under this Agreement.

14.10.2 If a party can during the Term take any steps, either unilaterally or in co-operation with the other party, to reduce the costs of the Contractor undertaking Haulage Operations, the party must use reasonable endeavours to take those steps (cost reduction steps).

14.10.3 If the taking of the cost reduction steps described in clause 14.11.2 results in a reduction in the cost to the Contractor of undertaking Haulage Operations the parties will consult in good faith with respect to the sharing, in a fair and reasonable manner, of the benefits of the resultant reduction in costs.

14.11 Haulage rates outside of Base Haulage Rates

14.11.1 At the request of FCNSW, the Contractor must conduct Haulage Operations to destinations for which no Base Haulage Rates are detailed in this Agreement.

14.11.2 If FCNSW makes a request under clause 14.12.1, the parties must negotiate in good faith to reach agreement on applicable Haulage Rates. If the parties are unable to reach agreement within five (5) Working Days of FCNSW's request, FCNSW may determine the Haulage Rates to apply provided always that the rates give the Contractor fair and reasonable remuneration for the services provided.

14.11.3 Any negotiation or determination pursuant to clause 14.12.2 must take into account;

- a) The rates listed in Schedule 3 for equivalent haulage distance
- b) the Contractor's hourly earning capacity per haulage unit carrying out Haulage Operations for which it is paid the Base Haulage Rates; and
- c) bona fide Market Rates.

14.12 Deductions from Haulage Rate Payments

If FCNSW is entitled to recover from the Contractor costs expenses due to loss of value or other damages under a provision of this Agreement FCNSW may recover the amount involved by deduction of the amount from payments it is required to make to the Contractor under this Agreement.

15. SUSPENSION

15.1. Suspension by FCNSW

15.1.1 FCNSW may, by verbal instruction from an Authorised Person to the Contractor followed within twenty four (24) hours by a written notice of suspension from FCNSW, suspend the whole or any part of Haulage Operations required under this Agreement if in the reasonable opinion of the Authorised Person:

- a) it is necessary for the protection or safety of any person;
- b) the Contractor is performing services in such a way that it may endanger the health and safety of any person or damage FCNSW plant, equipment or materials;
- c) the Contractor has breached any of the requirements of clause 6.1;
- d) the Contractor has breached this Agreement and the breach exposes FCNSW to the risk of prosecution under any State or Commonwealth law whether or not the breach is rectifiable or has been rectified;
- e) the Contractor fails to put in place procedures or actions designed to remedy a breach of this Agreement within forty eight (48) hours of FCNSW giving the Contractor written notice of the breach; or
- f) the Contractor is not complying with the Contractor's health and safety obligations under this Agreement.

15.1.2 FCNSW notice of suspension under clause 15.1.1 must specify the reasons for the suspension and, if practicable, the period of suspension provided FCNSW must by notice in writing to the Contractor revoke the suspension;

- (a) if the suspension is for a breach that is capable of being remedied, as soon as is reasonably practicable after the Contractor remedies the breach; and
- (b) if the suspension is for a breach that is not capable of being remedied, as soon as is reasonably practicable after FCNSW considers the necessity for the suspension has passed; except
- (c) if the suspension is for a breach that FCNSW's opinion would entitle it to terminate of this Agreement then no later than the sooner of:
 - i) the expiration of 28 days from service of the notice of suspension; and
 - ii) FCNSW electing not to terminate this Agreement under clause 16.1.

15.2. Suspension by the Contractor

15.2.1 The Contractor may from time to time during the duration of this Agreement notify FCNSW in writing of a request to suspend the whole or any part of the work under this Agreement, giving detailed reasons for the proposed suspension.

15.2.2 FCNSW must in its sole discretion determine whether the basis of the notice served under clause 15.2.1 is necessary or reasonable and if it so determines it must notify the Contractor in writing.

15.2.3 If FCNSW determines that the suspension requested by the Contractor under clause 15.2.1 is not necessary or reasonable it must notify the Contractor in writing giving reasons for the determination.

15.2.4 Where FCNSW has determined to suspend the whole or any part of the Agreement under clause 15.2.2 and at a later time in the opinion of FCNSW the reason for the suspension of such work no longer exists, FCNSW may by notice in writing to the Contractor at any time to that effect direct the Contractor to resume work and the Contractor must promptly comply with that direction.

15.3. Consequence of Suspensions

No claim may be made by either party against the other under this Agreement, to the extent the non-performance is due to a suspension imposed by FCNSW under this clause.

16. TERMINATION

16.1. By FCNSW

FCNSW may by notice in writing terminate this Agreement forthwith in any of the following events:

- 16.1.1 If for reasons other than Force Majeure or suspension in accordance with clause 15 the Contractor fails to carry out Haulage Operations in accordance with this Agreement for any continuous period of ten (10) Business Days.
- 16.1.2 If, in any Year, for reasons other than the direction of FCNSW or default by FCNSW the Contractor hauls less than 80 percent of the lesser of:
 - (a) the Base Annual Quantity; and
 - (b) the quantity made available by FCNSW for haulage in Delivery Schedules.
- 16.1.3 If, in any two (2) consecutive Years, for reasons other than the direction of FCNSW or default by FCNSW, the Contractor hauls less than 90 percent of the lesser of:
 - (a) the Base Annual Quantity; and
 - (b) the quantity made available by FCNSW for haulage in Delivery Schedules.
- 16.1.4 If the Contractor suffers an Insolvency Event.
- 16.1.5 If the Contractor is in breach of clause 18.2, whether or not FCNSW has given notice of such breach.
- 16.1.6 If the Contractor is in breach of a material term of this Agreement and such default continues for fourteen (14) days after written notice from FCNSW to the Contractor to rectify the breach. For the purposes of this clause 16.1.6 a material term is a term the breach of which whether alone or by its recurring nature substantially interferes with the proper performance by the Contractor of its obligations under this Agreement.
- 16.1.7 Where the Contractor has committed three breaches of material terms of this Agreement (as defined in clause 16.1.6) which have been notified in writing by FCNSW in any period of six (6) months, whether or not those breaches have been remedied.
- 16.1.8 If in two consecutive Quarters the Contractor's Performance Assessment Record is scored less than 80% provided FCNSW advised the Contractor in writing of the results of the first unsatisfactory Performance Assessment Record, and the notice terminating this Agreement includes the second unsatisfactory Performance Assessment Record.
- 16.1.9 If the Contractor has breached clause 6.1.1 (whether or not FCNSW has given notice of such breach) and the breach relates to the Contractor or any of its employees, servants agents or subcontractors committing an offence under section 38 or section 83 of the Act.

16.2. By the Contractor

The Contractor may, by notice in writing, terminate this Agreement forthwith in its absolute discretion:

- 16.2.1 If FCNSW contravenes or fails to comply with any material term of this Agreement and such default is not remedied by FCNSW within a period of fourteen (14) days after notice of same has been served on FCNSW. For the purposes of this clause 16.2a material term is a term the breach of which whether alone or by its recurring nature substantially interferes with the proper performance by

FCNSW of its obligations under this Agreement, and includes non-payment and delayed payment of amounts owed to the Contractor under this Agreement.

- 16.2.2 Where FCNSW has committed three breaches of material terms of this Agreement (as defined in clause 16.2) which have been notified in writing by the Contractor in any period of six (6) months, whether or not those breaches have been remedied.

16.3. Consequences of Termination

Termination of the Agreement under this clause shall not affect any rights and liabilities of either party arising before such termination.

17. TAKING OVER CONTRACTOR'S OBLIGATIONS

17.1. Contractor unable to perform

- 17.1.1 If FCNSW determines on a reasonable basis that the Contractor is unable to perform any of its obligations under this Agreement for any reason FCNSW may after consultation with the Contractor and notice in writing to the Contractor take over the performance of the whole or part of the Contractor's obligations for the duration of the Contractor's incapacity to perform.
- 17.1.2 If the Contractor is unable to perform its obligations for reasons other than Force Majeure and FCNSW takes over the performance of those obligations under clause 17.1.1 and the cost incurred by FCNSW in performing the Contractor's obligations is greater than the amount which would have been paid to the Contractor if it had been performed by the Contractor the difference shall be a debt due from the Contractor to FCNSW.
- 17.1.3 Nothing in this clause will prejudice the rights of FCNSW to recover damages or exercise any other right relating to the Contractor's incapacity to perform its obligations.

18. GENERAL

18.1. Non Compliance

If at any time a party becomes aware that it will be unable to comply with its obligations under this Agreement, the party must immediately give notice in writing to other party specifying the details of and the reasons for that inability to comply.

18.2. Assignment

- 18.2.1 The Contractor must not transfer or assign this Agreement or any part, share or interest in the Agreement without the prior consent in writing of FCNSW provided that the consent of FCNSW must not be unreasonably or arbitrarily withheld in the case of a responsible, capable and solvent assignee (the onus of proving such matters being upon the Contractor). FCNSW's consent will be deemed to be reasonably withheld if it is withheld because in FCNSW's opinion the assignment is not in FCNSW's commercial interests as it will consolidate too large a proportion of harvesting or haulage services provided to it in a single entity or related entities.
- 18.2.2 If the Contractor is a company, any change in the control of the Contractor shall be deemed to be an assignment of the Agreement for the purposes of the preceding sub clause. For the purposes of this clause "change in control" means change in control of the composition of the board of directors or control of more than fifty percent (50%) of the shares with the right to vote in general meetings of the company.
- 18.2.2A If the Contractor is an unincorporated joint venture, any change in the control of a Contractor Participant shall be deemed to be an assignment of the Agreement for the purposes of clause

18.2.1. For the purposes of this clause "change in control" means change in control of the composition of the board of directors or control of more than fifty percent (50%) of the shares with the right to vote in general meetings of the company.

18.2.3 The format of the document of Assignment of Agreement must be approved by FCNSW which must act reasonably in its consideration of the format. Contractor must bear all reasonable costs and expenses incurred by FCNSW arising out of the assignment.

18.2.4 FCNSW may assign this Agreement after provision to the Contractor of one month's previous notice in writing of its intention to assign and provision to the Contractor of particulars of the assignee.

18.3. Damage to Property

18.3.1 The Contractor will be liable for loss of or damage to any part of the Area of Supply (fair wear and tear excepted) or private property caused by the Contractor or any of its sub-contractors in the performance of this Agreement.

18.3.2 Without limiting the preceding clause, if any damage (fair wear and tear excepted) is caused by the Contractor to any roads, tracks, culverts, fences or any other structure, then the Contractor must undertake such repairs and or restoration work at its own cost and expense to return the road, track, culvert, fence or other structure to the condition they were in prior to their damage by the Contractor.

18.3.3 FCNSW may undertake any repair work arising out of a default by the Contractor under this clause 18.3 and FCNSW may deduct the cost of such work from any monies due by FCNSW to the Contractor.

18.4. Indemnity and liability

18.4.1 FCNSW shall not be liable in any way and the Contractor 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.

18.4.2 The Contractor 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 breach of this Agreement by, or negligent act or omission of, the Contractor, except where the action, proceedings, claims, demands, costs and expenses is in connection with or arises out of an act or omission or breach of this Agreement by FCNSW.

18.4.3 If the Contractor or FCNSW fails to perform or breaches any of the terms and conditions of this Agreement, any loss suffered by the other party will be limited to loss, damage, cost or expense incurred as a direct result of the failure or breach but will not include any consequential loss or loss of profits.

18.5. Force Majeure

18.5.1 If the obligations of FCNSW to supply Log Products under a Supply Agreement are terminated, modified or suspended as a result of Force Majeure (as the term may be applied in the relevant Supply Agreement), Insolvency Event or as a result of Market Collapse, the occurrence of such termination, modification or suspension shall be deemed to constitute Force Majeure in this Agreement which prevents FCNSW from performing its obligations under this Agreement in relation to a similar volume of Log Products as the volume of Log Products affected by such termination, suspension, or modification.

18.5.2 Notwithstanding any other provision of this Agreement if either party is prevented from performing all or any of its obligations under this Agreement by reason of Force Majeure ("the affected party") and the Force Majeure is beyond the control of the affected party:

- a) the other party will have no claim against the affected party under this Agreement, to the extent that the non-performance is due to the Force Majeure;
- b) if the affected party is unable to resume the performance of its obligations within a period of six (6) months from the date of the occurrence of the Force Majeure or the date when the occurrence of the Force Majeure first became apparent either party may terminate this Agreement by written notice;
- c) 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 twenty eight (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;
- d) if there is a reduction in the quantity of Log Products harvested from the Area of Supply as a result of Force Majeure or Market Collapse or both, the Contractor will have no claim against FCNSW if FCNSW allocates the available haulage to the Contractor and other persons with contracts with FCNSW for the haulage of Log Products from the Area of Supply in proportion to their respective entitlements under their contracts.

18.5.3 Despite any other provision of this Agreement FCNSW may not be required to pay liquidated damages or Haulage Rates other than the Base Haulage Rates to the extent its failure to make Haulage Operations available to the Contractor occurred by reason of Force Majeure reducing the quantity of Log Products harvested in the Area of Supply.

18.6. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws in force from time to time in the State of New South Wales and the parties agree to submit to the jurisdiction of the Courts of New South Wales.

18.7. Settlement of Disputes

18.7.1 If a dispute or difference between the parties arises out of or in connection with this Agreement or concerning the interpretation or operation of any provision of this Agreement (except clause 3.2) which cannot be settled by the parties within fourteen (14) days, the parties agree that they must endeavour to settle the dispute or difference by mediation before having recourse to arbitration. The mediator must be a person agreed by the parties or failing agreement a party may request the Australian Commercial Disputes Centre (ACDC) to appoint a mediator and the mediator will be so appointed.

18.7.2 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.

18.7.3 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.

18.7.4 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 other a written nomination of a suitable person or persons, then a party may request the President for the time being of the Institute of Arbitrators, Australia, to appoint an arbitrator and the arbitrator

will be so appointed. Any arbitration must be undertaken in accordance with, and subject to, The Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

18.7.5 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.

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

18.8. Costs and Expenses

18.8.1 Each party must pay and bear its own costs and expenses of, and relating to, the negotiation, preparation, stamping and execution of this Agreement.

18.8.2 Unless otherwise directed by the mediator or arbitrator, the parties must bear equally the costs of the mediator or arbitrator under clause 18.7.

18.9. Severance

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.

18.10. Confidentiality

All details of this Agreement shall be held confidential unless written approval to reveal them is given in writing signed by both parties except to the extent it is:

18.10.1 necessary for FCNSW to reveal details in order to establish FCNSW's costs of delivering or causing the delivery of Log Products to a Supply Agreement holder;

18.10.2 is required to be disclosed by law.

18.11. Liability for loss of log products

Upon demand by FCNSW the Contractor must pay FCNSW the value of Log Products loaded onto the Contractor's haulage vehicle but lost or damaged prior to their delivery to a Product Destination.

18.12. Rights of Other Persons

18.12.1 Nothing in this Agreement shall affect the rights, powers and privileges acquired by any person (whether before or after the commencement of this Agreement) under the Act or any other Act.

18.12.2 Subject to the rights of the Contractor under this Agreement, nothing in this Agreement shall restrict the powers of FCNSW under the Act (including, but not limited to, the right to supply Log Products and forest materials to any company, person or persons or to issue licenses to any other company, person or persons to obtain Log Products or forest materials within the Areas of Supply).

18.13. Whole Agreement

This Agreement constitutes the sole and entire agreement between the parties and no warranties, representations, guarantees or other terms and conditions of whatsoever nature which are not contained herein shall be of any force or effect.

18.14. Variation of Conditions

18.14.1 This Agreement embodies the total understanding of the parties.

18.14.2 FCNSW and the Contractor must jointly confirm in writing any agreement to vary, waive, discharge or release (either at law or in equity) any of the provisions of this Agreement.

18.15. Waiver

Subject to any express consent in writing of any of the parties hereto, a waiver by any party of any default in the strict and literal performance of, or compliance with, any provision, condition or requirement herein must not be deemed to be a waiver of strict and literal performance of any compliance with any other provision, condition or requirement herein, nor to be a waiver, or in any manner, release any other party from strict compliance with any provision, condition or requirement herein in the future, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right accruing to that party thereafter.

18.16. Cooperation

The parties must consult from time to time and co-operate with each other for the purpose of, so far as possible, their each respectively undertaking their respective obligations under this Agreement and ensuring the objectives and purposes of this Agreement are achieved promptly and in a viable manner and the Contractor must consult from time to time and co-operate with any harvesting or haulage engaged by FCNSW. For that purpose the Contractor must observe any reasonable direction by FCNSW as to the manner in which the Contractor deals with, or undertakes an operation affecting, any such harvesting or haulage contractor.

18.17. Notice

18.17.1 Any notice required to be served on a party under this Agreement may be served by delivering, posting or emailing it to the business address and/or nominated email address designated for the party in Item 2 Schedule 1.

18.17.2 Any notice sent shall be deemed to have been properly served:

- a) If delivered to any of the above addresses - at the time of delivery if before 5pm on a Business Day, otherwise at 9am on the next Business Day;
- b) If posted to any of the above addresses, on the second business day after posting;
- c) If sent by email, on the next business day after such notice is given provided receipt of the email is verified by the sender's email account specifying the addressee's email.

18.18. Government Information (Public Access) Act 2009

18.18.1 The Contractor must, within seven (7) days of receiving a written request by FCNSW, provide FCNSW with immediate access to the following information contained in records held by the Contractor:

- a) information that relates directly to the performance of the services provided to FCNSW by the Contractor pursuant to the Agreement;
- b) information collected by the Contractor from members of the public to whom it provides, or offers to provide, the services pursuant to the Agreement; and
- c) information received by the Contractor from FCNSW to enable it to provide the services pursuant to the Agreement.

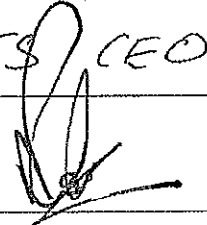
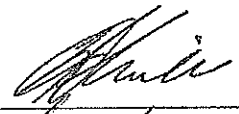
18.18.2 For the purposes of clause 18.18.1, information does not include:

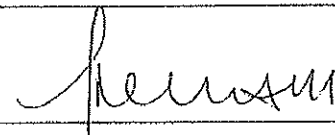
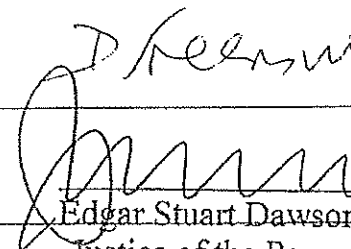
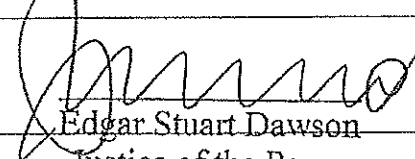
- a) information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;
- b) information that the Contractor is prohibited from disclosing to FCNSW by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
- c) information that, if disclosed to FCNSW, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to FCNSW, whether at present or in the future.

18.18.3 The Contractor will provide copies of any of the information in clause 18.18.1, as requested by FCNSW, at the Contractor's own expense.


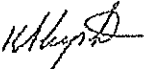
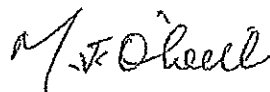
18.18.4 Any failure by the Contractor to comply with any request pursuant to clause 18.18.1 will allow FCNSW to terminate the Contract by providing notice in writing of its intention to do so with the termination to take effect seven (7) days after receipt of the notice. Once the Contractor receives the notice, if it fails to remedy the breach within the seven (7) day period to the satisfaction of FCNSW, then the termination will take effect seven (7) days after receipt of the notice.

19. EXECUTED AS AN AGREEMENT

Executed for and on behalf of FCNSW	
Delegate Name	NICK ROBERTS CEO
Delegate Signature	
Witness Name	DAVID GILES
Witness Signature	
Date	17/6/15

Executed for and on behalf of the Contractor Participant	
Contractor Participant	Greensill Bros Pty Ltd
Director's Name	LORNA GREENSILL
Director's Signature	
Director/Secretary's Name	DERIS ALAN GREENSILL
Director/Secretary's Signature	
Witness Name	
Witness Signature	Edgar Stuart Dawson Justice of the Peace No. 101834
Date	16/12/2015

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.

Executed for and on behalf of the Contractor Participant	
Contractor Participant	Brian Smith Timber Transport Pty Ltd
Director's Name	BRIAN LAURENCE SMITH
Director's Signature	
Director/Secretary's Name	KATHERINE ANNE LEVINGSTON
Director/Secretary's Signature	
Witness Name	MICHAEL JOHN O'NEILL
Witness Signature	
Date	16 th December 2015
Executed for and on behalf of the Contractor Participant	
Contractor Participant	Hoffmans Haulage Pty Ltd
Director's Name	
Director's Signature	
Director/Secretary's Name	
Director/Secretary's Signature	
Witness Name	
Witness Signature	

Executed for and on behalf of the Contractor Participant	
Contractor Participant	Brian Smith Timber Transport Pty Ltd
Director's Name	
Director's Signature	
Director/Secretary's Name	
Director/Secretary's Signature	
Witness Name	
Witness Signature	
Date	
Executed for and on behalf of the Contractor Participant	
Contractor Participant	Hoffmans Haulage Pty Ltd
Director's Name	Laurence Hoffman
Director's Signature	L. Hoffman
Director/Secretary's Name	Christine Hoffman
Director/Secretary's Signature	Ch Hoffman
Witness Name	Lisa Hoffman
Witness Signature	L. Hoffman

Date	17 DECEMBER 2015
------	------------------

SCHEDULE 1 – DETAILS

Item 1 – Date of Agreement

Date of Agreement	17 DECEMBER 2015
Contract Number	NT 16 - 001

Item 2 – Contractor Details

Item 2 – Contractor Details

Company Name	Greensill Bros. Pty. Limited
Name(s) of Principal(s)	Dennis Greensill
ABN	90 003 687 705
ACN	003 687 705
Business Address	22 Lillypool Road South Grafton NSW, 2460
Telephone Number	02 6642 4804
Email	info@greensillbros.com.au

Company Name	Brian Smith Timber Transport Pty. Ltd.
Name(s) of Principal(s)	Brian Smith
ABN	51 003 789 606
ACN	003 789 606
Business Address	12 Derby Street Walcha NSW, 2354
Telephone Number	02 6777 2126
Email	briansmith@northnet.com.au

Company Name	Hoffmans Haulage Pty Ltd
Name(s) of Principal(s)	Laurence Hoffman
ABN	42 002 907 459
ACN	002 907 459

Business Address	25 Commerce Street Wauchope NSW, 2446
Telephone Number	02 6586 4795
Email	haulers.fallers@bigpond.com

- FCNSW Details

Title of Contact Person	General Manager Hardwood Forests
Business Address	121-131 Oratava Av, West Pennant Hills NSW 2125
Telephone Number	(02) 94074254
Email	mark.hitchins@fcnsf.com.au

Item 3 – Commencement Date

Commencement Date	01 March 2016
-------------------	---------------

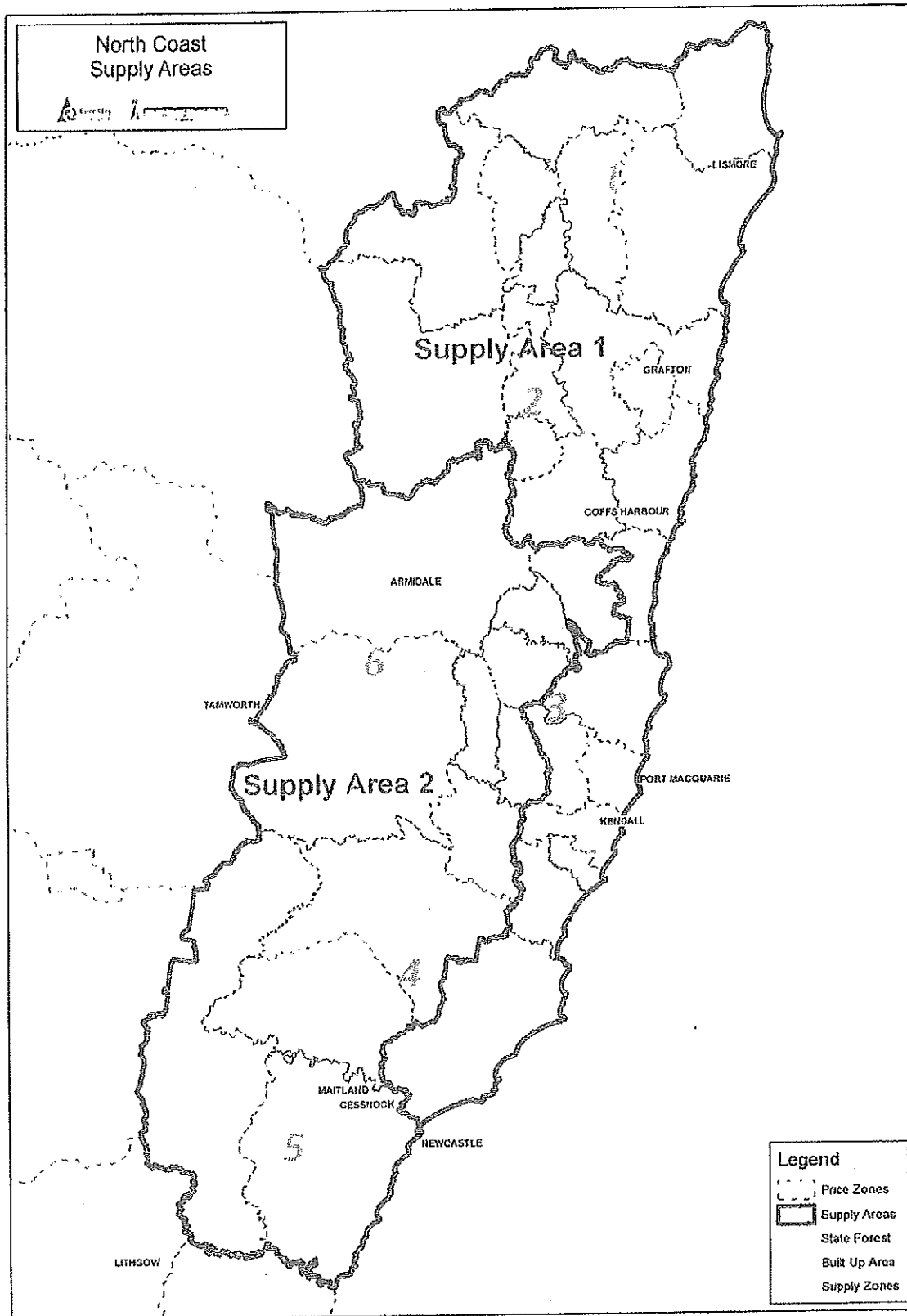
Item 4 – Expiry Date

Expiry Date	28 February 2021
-------------	------------------

Item 6 – Base Annual Quantity

	First Year	Subsequent Years	Last Year
Base Annual Quantity	149,667 tons	449,000 tons	299,333 tons

Item 8 – Area of Supply and Priority Area of Supply



SCHEDULE 2 – EQUIPMENT AND EQUIPMENT SPECIFICATION

**Item 1 – Equipment and Equipment Specification
Equipment**

Equipment Specification

Equipment	Make/Model and Year of Manufacture	Mandatory Equipment Specification
Prime Mover		<p>UHF two way radio.</p> <p>UHF hand held radio.</p> <p>A cabin rear guard system manufactured to a standard to protect truck occupants in the event of load shift.</p> <p>On-board scales to allow load measurement to an accuracy of +/- 100 kg.</p> <p>Global Positioning System(GPS) capable of capturing data specified in item 2 of this schedule</p> <p>Smart Phone</p>
Trailer		<p>On-board scales to allow load measurement to an accuracy of +/- 100 kg.</p> <p>Airbags.</p> <p>Automatic load tensioning system on the rear bay of the trailer.</p> <p>Remote release straps such that the loads can be unsecured by remaining on the drivers side of the vehicle.</p> <p>1800 LOGHAUL signage indicating the vehicle's designated fleet number</p> <p>Electronic Braking System is to be fitted to all trailers purchased after the commencement of this agreement</p> <p>Light Emitting Diodes (LED) lights on brake, tail and indicator, and clearance lights.</p> <p>A design aimed at improving vehicle stability, with the objective of achieving a Static Rollover Threshold(SRT) greater than 0.35g for the trailer.</p>
Vehicle combination (prime mover and trailer)		All combinations (i.e. trailer(s) and prime mover) must exceed a Static Roll-over Threshold (SRT) of 0.35g at all times.
Office/Home Base Electronic Equipment		Personal computer with internet connection and an email address.

Item 2 – GPS Data Requirements

The GPS service provider will be Mobile Tracking and Data Pty Ltd, ABN 51 104 260 737 at 101 Rookwood road, Yagoona NSW 2199.

The GPS tracking device is known as the 7050 touch screen unit with high gain antenna.

FCNSW will have full live access to the Contractors GPS portal for the monitoring of GPS data collected from each truck.

SCHEDULE 3 – HAULAGE RATES

Item 1 –Base Haulage Rates (\$/GMT)

1. DESCRIPTION OF ROAD CLASSES

Class	Description
A	Sealed roads where none of the conditions of Class B apply.
B	<p>Unsealed roads: Which are formed and drained by means other than rollover drains and where none of the conditions of Class C apply.</p> <p>Sealed roads: Which loaded truck travel speed, fuel economy and wear and tear is assessed by Forests NSW as being no better than an equivalent unsealed B class surface due to one or more of: narrow single lane width, bitumen surface deterioration, sustained steep grade (>500m >8 degrees) or poor horizontal alignment.</p>
C	<p>Unsealed roads: Which compared to Class B roads, loaded truck travel speed is reduced and truck wear and tear increased due to; Adverse surface conditions, rollover drains, rock, rutting or corrugations. Adverse road grades exceeding 5 degrees for more than 500 meters.</p>

Item3– Adjustment of Haulage Rates by reason of Variation in GCMLs

- Current Gross Combination Mass Limit (GCML) regulations are likely to vary during the Term.
- The GCML for each vehicle configuration at the Commencement Date is recorded below.

Vehicle Configuration	Gross Combination Mass Limit At Contract Commencement (With FUPS)	Current Concessional Mass Management (CML) limits at Contract Commencement (with FUPS)
6 Axle Combination	43.0 tonnes	44.0 tonnes
7 Axle Combination, operating as a General Access Vehicle	50.5 tonnes	51.5 tonnes
7 Axle Combination, operating as a Restricted Access Vehicle	56.0 tonnes	57.5 tonnes
9 Axle Combination	63.0 tonnes	65.0 tonnes

- Where a GCML is increased during the Term

- ascertain the amount of the increase and express it as a number of tonnes.

For example an increase of ½ a tonne shall be expressed as 0.5 tonnes (the "GCM Increase").

- ascertain the percentage increase in the GCML ("GCML Factor") by applying the formula:

$$\text{GCML Factor} = \text{GCML Increase} / \text{GCML} \times 100$$

For example if the GCML Increase is 0.5 tonnes for a 6 Axle Rig, the GCML Factor is 0.5/43 which equals 1.16percent.

iii. ascertain the GCML Rate Adjustment Factor (GCML RAF) by the formula:

$$\text{GCML RAF} = 100\% - \text{GCML Factor}$$

For example, if the GCML Factor is 1.16%, the GCML RAF is 100% - 1.16% which equals 98.84%.

iv. calculate new haulage rates ("NHR") by applying the GCML RAF to existing haulage rates ("EHR") by applying the following formula:

$$\text{NHR} = \text{EHR} \times \text{GCML RAF}$$

For example if an existing haulage rate for a particular vehicle configuration is \$10.00 per tonne, and the GCML RAF is 98.84%, the new haulage rate is \$10.00 X 98.84% which equals \$9.88per tonne.

- (d) Where adjustments are to be made to Haulage Rates arising out of any variations in GCMLs, the adjustment shall be made before the application of adjustments arising from **Schedule 4**.

Item 4– Voluntary Higher Mass schemes

a) If a contractor participates in the National Heavy Vehicle Accreditation Scheme's Mass Management Module then any adjustments in rates will only apply if the current CML limits as listed above are increased.

b) If other Voluntary schemes are introduced or become available (eg: Intelligent Access Program) that provide an increase in allowable GCML's on the designated routes then this schedule may be applied by FCNSW by comparing the total allowable increased GCM under the scheme versus the GCML as listed in the above table at contract commencement or as updated.

c) If there are reasonable extra costs associated with achieving higher mass limits under a new scheme compared to current limits then this is to be considered by FCNSW as an offset to any potential rate adjustment.

Item 5– Liquidated Damages Formula

$$\text{LD} = (\text{TQ} - \text{AAQ}) \times 0.3 \times \text{AHR}$$

Where:

"LD" means the liquidated damages to be paid by FCNSW to the Contractor;

"TQ" means the Threshold Quantity;

"AAQ" means the Actual Annual Quantity for the relevant Year;

"AHR" means the weighted average Haulage Rate paid during the relevant Year(determined by dividing the total amount paid by FCNSW to the Contractor during the Year by the Actual Annual Quantity)

The following worked example will serve as a model for the calculation of the Annual Quantity Adjustment:

Item	Reference	Value
Base Annual Quantity	BAQ	100,000
Threshold Quantity	TQ	80%
Threshold Quantity (t)	TQ	80,000
Actual AnnualQuantity (t)	AAQ	70,000
Average Haulage Rate(\$/t)	AHR	\$20.00
Liquidated Damages	LD	$LD = (TQ - AAQ) \times 0.3 \times AHR$
Liquidated Damages	LD	\$60,000

SCHEDULE 4 – RATE REVIEW MECHANISM

Part 1 – Table of Indicators and Indicator Weightings at Commencement Date

Column 1	Column 2	Column 3	Column 4	Column 5
Cost Item	Indicator	Data Source	Base Indicator Rate For the first review	Indicator Weighting
Item 1: CPI	100% of the movement in the ABS Consumer Price Index Cat No 6401 table 1 and 2 (Series ID A2325846C; Index Numbers ; All groups ; Australia)	www.abs.gov.au	107.5	73.0%
Item 2: Fuel	100% of the movement in the daily weighted average Terminal Gate Price, in dollars per litre, of Diesel in Sydney as published by the Australian Institute of Petroleum (AIP) at www.aip.com.au , minus the GST , minus the On Road Tax Credit (ORTC). Rounded to five decimal places.	www.aip.com.au		27.0%
		Base Price	1.24700	
		Minus GST	1.1336	
		Minus ORTC	0.1276	
		Total(Net Price)	1.0060	
Total				100.0%

Part 2 - Methodology to determine movement in Haulage Rates

In this Schedule unless the context indicates to the contrary:

“Base Indicator Rate” for a review means the Indicator Rate which was the Current Indicator Rate for the previous review except for the first review where it means the figure specified in Column 4 of Part 1 as the Base Indicator Rate;

“Cost Item” means a factor relevant to the cost of carrying out Haulage Operations more particularly being any item set out in column 1 of Part 1;

“Current Indicator Rate” means

- 1) In the case of Item 1: CPI, the Current Indicator Rate will be the value of the ABS Consumer Price Index Cat No 6401 table 1 and 2 (Series ID A2325846C; Index Numbers ; All groups ; Australia), as last published by the Australian Bureau of Statistics (ABS) prior to the Quarter in which the reviewed Haulage Rates will be applied at www.abs.gov.au .
- 2) In the case of Item 2: Fuel, the Current Indicator Rate will be the daily average Terminal Gate Price, in dollars per litre, of Diesel in Sydney as published by the Australian Institute of Petroleum (AIP) at www.aip.com.au for the Quarter prior to the Quarter in which the reviewed Haulage Rates will be applied, minus the Goods and Services Tax (GST), minus the On Road Tax Credit (ORTC). established by the ATO at www.ato.gov.au ,rounded to five decimal places.

"Indicator" means an Indicator of a Cost Item more particularly being any Indicator set out in column 2 of Part 1;

"Indicator Rate" means the value or status of an Indicator at a point in time;

"Indicator Weighting" means the weighting given to a Indicator for the purpose of calculating the weighted movement across all Indicators during a review more particularly being the weighting set out in column 5 of Part 1 as varied from review to review in accordance with this Schedule 4;

"Review Period" means a Quarter.

The following describes the method of determining the movement in the Rate Review Mechanism.

1. The information set out in **columns 4 and 5 of Part 1** are the Base Indicator Rates and Indicator Weightings to be applied in the first review of the Base Haulage Rates.
2. Ascertain the level of each Indicator expressed in dollars and cents, percentage or as an index (as the case may be) current at the time of the review (the Current Indicator Rate). The Current Indicator Rate will be the Base Indicator Rate for the next review.
3. Ascertain the weighted movement in each Indicator during the relevant Review Period by:
 - establishing percentage increase (or decrease) in the Indicator Rate (by comparing the Current Indicator Rate to the Base Indicator Rate);
 - applying any percentage change to the percentage change indicated in the Indicator description in **column 2 of Part 1**; and
 - applying any Indicator Weighting specified in **column 5 of Part 1** to that percentage change.

An example of the methodology is shown in the example below:

Item	Value
Base Indicator Rate	103.6
Current Indicator Rate	106.2
Indicator Movement	2.51%
Indicator Movement Adjustment	100%
Adjusted Movement	2.51%
Indicator Weighting	73.00%
Weighted Movement in the Indicator	1.83%

4. Calculate the weighted movement across all Indicators by summing the weighted movement for each individual Indicator.
5. The weighted movement across all Indicators calculated in accordance with **clause 4** is the movement in haulage cost factors over the relevant Review Period for the purposes of this Agreement. The new Base Haulage Rates determined under this Rate Review

Mechanism are calculated by applying the weighted movement across all Indicators (from clause 4 above) plus one (1) to each current Base Haulage Rates. For example:

Item	Value
Base Haulage Rate -(70-75km)	\$9.00
Weighted Movement in All Indicators Plus 1	103.00%
New Base Haulage Rate (70-75km)	\$9.27

6. For the purposes of the next Application of the Rate Review Mechanism under clause 14.7ascertain reweighted **column 6 of Part 1**Indicator Weightings for each Indicator by multiplying the then current **column 6 of Part 1**Indicator Weighting for each Indicator by the period movement in the relevant Indicator plus one (see **clause 3** above) and then dividing the result by the weighted movement across all Indicators plus one (see **clause 4** above).This will produce a new offset of Indicator Weightings which sum to 100 percent.

SCHEDULE 5 – PERFORMANCE ASSESSMENT

Item 1– Contractors Performance Assessment

Element	Aspect	Weight
Safety	RIFR (# of Incidents * 200,000 / person hrs worked YTD)	5%
	Incident Reporting	10%
	Safety Observations	5%
	Third Party/Independent SMS Audit	15%
Operational	Deliveries	15%
	Quality (Overloading)	15%
Compliance	OIR Compliance	10%
	Quarterly NCIR Incident Rate (No incidents *500 / total person hrs worked in quarter)*100	5%
	Regulatory fines (Speeding, overloading etc)	10%
Self Management	FCNSW Management	10%
Total		100%

SCHEDULE 6 – DELIVERY DATA

Delivery Data includes:

- GPS data;
 - The number of kilometres in which the Equipment engaged in Haulage Operations was loaded with Log products as a percentage of all kilometres travelled by Equipment engaged in Haulage Operations under this Agreement;
 - Equipment utilisation measured as a percentage of the time that Equipment engaged in Haulage Operations is operating under this Agreement compared to the number of hours the Equipment was legally able to work.
 - The quantities of Log Products hauled by the Contractor under this Agreement;
 - The Harvesting Units from which the Log Products were hauled;
 - The Product Destinations to which the Log Products were hauled; and
 - Any other relevant information requested by FCNSW;
- during the period specified by FCNSW in its request

SCHEDULE 7 - CODE OF PROCEDURE

SCHEDULE 8 – CHAIN OF RESPONSIBILITY REQUIREMENTS

The responsibilities set out below are in addition to those set out in the main body of the Agreement and do not in any way limit the Contractors obligations under the Chain of Responsibility Laws, any other Applicable Laws or this Agreement.

1. Mass Requirements

1.1. Carrying Capacity

The Contractor will;

- (a) Provide FCNSW with the Gross Combination Mass Limit of each Vehicle; and
- (b) Where requested by FCNSW, provide FCNSW with such documentation as may be reasonably required by FCNSW to verify the Gross Combination Mass Limit of the Vehicle.

1.2 Product Weight

The Contractor must;

- (a) Ensure that each Vehicle when loaded with Log Products does not exceed the Gross Combination Mass Limit of the vehicle;
- (b) confirm on the delivery docket for each load of Log Products delivered to a Product Destination (Delivery Docket) that the Vehicle and the load does not exceed the Gross Combination Mass Limit.

1.3 Positioning of the logs on the vehicle

The Contractor must:

- (a) Train its Drivers to ensure Log Products are positioned on the Vehicle in accordance with the Chain of Responsibility Laws, and
- (b) Confirm on the Delivery Docket that the logs have been positioned on the Vehicle in accordance with the Driver's training and in compliance with requirements under the Chain of Responsibility Laws.

2. Vehicle Dimension

The Contractor must confirm on the Delivery Docket the load complies with the vehicle dimension requirements under Chain of Responsibility Laws.

3. Load Restraint

The Contractor will:

- (a) Restrain the each load of Log Products delivered to a Product Destination in accordance with the requirements of the Chain of Responsibility Laws; and
- (b) Confirm on the Delivery Docket for each such load that the load has been restrained in accordance with the Chain of Responsibility Laws.

4. Fatigue Management

The Contractor must comply with fatigue management obligations under the Chain of Responsibility Laws in respect of the Haulage Operations (including where applicable the preparation of a fatigue management plan), and must confirm on each Delivery Docket that it has complied with such obligations.