

**Forestry Corporation of NSW**

**and**

**[ ]**

Contract Terms and Conditions

**Haul and Load**

Commencement Date: 01 July 2021

Term: 5 Years

Quantity: [ ] Tonne Kilometres

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# Date of and PARTIES To AGREEMENT

**THIS AGREEMENT** is made on the date specified in **Item 1** **Schedule 1** of this Agreementbetween the **FORESTRY CORPORATION OF NEW SOUTH WALES** (“FCNSW”), a statutory, State owned corporation constituted under the Forestry Act 2012 (NSW) andthe **CONTRACTOR** whose details appear in **Item 2 Schedule 1** (“the Contractor”).

# Recitals

FCNSW has entered into a number of 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.

# Interpretation

## 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 Yearmeans the greater of

1. the actual quantity expressed in Tonne Kilometres made available for Haulage Operations by the Contractor as notified in Haulage Plans; or
2. the actual quantity expressed in Tonne Kilometres delivered to Product Destinations by the Contractor during the relevant Year.

**“Actual Quarterly Quantity”** for a Quarter means the greater of:

1. the actual quantity expressed in Tonne Kilometres made available for Haulage Operations by the Contractor as notified in Haulage Plans; or
2. the actual quantity expressed in Tonne Kilometres delivered to Product Destinations by the Contractor during the relevant Quarter.

**"Annual Quantity Adjustment"** means an adjustment to the amount payable by FCNSW to the Contractor for its Haulage Operations services during a Year, to be made when specified by, and calculated in accordance with **Item 7** **Schedule 5** and **clause 14.2.1.**

 **“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.

**“Average Haulage Rate”** for a Year means the average Haulage Rate for the Year calculated by dividing the total amount paid by FCNSW to the Contractor as Base Haulage Rates during the Year by the total Tonne Kilometres of Log Products delivered by the Contractor under this Agreement during the Year.

**“Base Annual Quantity”** for a Year means the quantity in Tonne Kilometres 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 4** as the Base Haulage Rates as amended from time to time in accordance with this Agreement.

**"Base Quarterly Quantity"** means the quantity in Tonne Kilometres specified as the Base Quarterly Quantity for each Quarter in the Base Quarterly Quantity Schedule as may be amended from time to time in accordance with this Agreement.

**"Base Quarterly Quantity Schedule"** means **Item 10 Schedule 1**.

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

 **“Business Days”** means the days Monday to Friday inclusive but excluding Public Holidays.

**“Centralised Dispatch”** means the scheduling of all vehicle movements under this agreement by FCNSW or its delegate.

**“Chain of Responsibility Laws”** means all applicable laws relating to road transport including those in respect of;

1. Load
2. Mass
3. Dimension
4. Load Restraint, and
5. Fatigue management
6. Maintenance management.

**“Chain of Responsibility Report”** means a report detailing any breaches of Chain of Responsibility Laws and what corrective actions have been undertaken by the Contractor to remedy against potential future breaches.

**“Chain of Responsibility Requirements”** means the requirements set out in **Schedule 7** of this Agreement and any Procedures.

 **“Codes”** means the Log Measurement Procedure, the Forest Practices Code, as amended by FCNSW from time to time following notice to the Contractor.

**“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 Performance Assessment”** means a rating system used by FCNSW in its sole discretion to monitor the Contractor’s performance of its obligations under the Agreement as described in **Item 1 Schedule 8,** as amended by FCNSW from time to time following notice to the Contractor.

**“Cost Item”** see **Schedule 6**.

**“Cross Load”** has the meaning given in **Item 9 Schedule 5.**

**“Cross Load Rates”** means the Haulage Rates which, in accordance with **Item 9 Schedule 5**, apply to a Cross Load Trip if the Loaded Kilometres expressed as a percentage of the Cross Load Trip Kilometres is more than 60 percent (60%).

**"Cross Load Trip Kilometres"** has the meaning given in **Item 9 Schedule 5.**

**“Cross Loading Trip”** has the meaning given in **Item 9 Schedule 5.**

**“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 Data”** means all electronic data used and captured by haulage Equipment, including that relating to routes travelled as measured by global positioning systems, engine management system information or other related data as specified in **Schedule 10,** as amended by FCNSW from time to time following notice to the Contractor.

**“Driver”** means a person engaged or employed by the Contractor to drive a Vehicle.

**“Electronic Docket System”** means a system that captures, stores and transfers timber sales data (i.e. delivery dockets) electronically and requires a specific Smart Device to operate.

**“Electronic Delivery Data”** means the sales dataentered into the Electronic Docket System by the Contractor.

**“Equipment”** includes all items specified in **Item 1** **Schedule 3.**

**“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 or in the Monthly Fuel Adjustment.

**“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 FCNSW Plantations dated 2005 published by FCNSW, and as amended or replaced by FCNSW from time to time following notice to the Contractor.

**“Global Positioning System” or “GPS”** means a system capable of capturing in GPS exchange file format (GPX) the data listed in **Item 2 Schedule 3**.

**“Gross Combination Mass”** means the greatest possible sum of the maximum loaded mass of a Vehicle.

**“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.

**“Harvest Contractor”** means a contractor undertaking Harvesting Operations.

**“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 Stockpiles, segregation and stockpiling of Log Products and Residue Products at the Log Stockpile, and ancillary works including where applicable Loading Operations, Salvage Operations, track and Log Stockpile 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 Stockpiles at which Log Products will be stockpiled for Haulage Operations.

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

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

**“Haulage Operations Plan”** means a plan prepared by the Contractor, in the format approved by FCNSW, which contains site specific information for each Harvesting Unit specifying haulage routes to be used, traffic management procedures, management of traffic control signs and other procedures relevant to the safe conduct of Haulage Operations.

**“Haulage Plan”** means a plan prepared by FCNSW specifying;

1. the quantities and categories of Log Products to be hauled;
2. the Harvesting Units from which the Log Products are to be hauled;
3. the Product Destinations to which the Log Products are to be hauled;
4. the quantities, categories of Log Products to be loaded by the Contractor;
5. the Harvesting Units from which Log Products are to be loaded by the Contractor;
6. any specific restrictions or targets on hourly deliveries to customers to assist in even woodflow and reduce congestion;
7. and the Period to which it applies.

**“Haulage Rate”** means the amount of money payable by FCNSW to the Contractor for the haulage, of Log Products to a Product Destination, and where applicable Loading Operations, calculated on the basis of a Tonne being the Base Haulage Rates.

**“Haulage Rates Schedule”** means the schedule, detailed in **Item 1 Schedule 5**, for calculating the appropriate Haulage Rate for undertaking Haulage Operations.

**“Haulage Supervisor”** means a person nominated by the Contractor to administer, schedule and coordinate Haulage Operations on behalf of the Contractor under this Agreement.

**“Incomplete Quarter”** means a Quarter during which the Term either starts or ends.

**“Indicator”** see **Schedule 6.**

**“Indicator Rate”** see **Schedule 6.**

**“Insolvency Event”** means in respect of a person:

1. 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;
2. a liquidator or provisional liquidator being appointed in respect of the person;
3. 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;
4. the person becoming, or admitting in writing that it is, or being declared to be insolvent or unable to pay its debts;
5. 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);
6. the person suspending payments of its debts generally; or
7. 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 8 Schedule 5**.

**“Loading Contractor”** means a contractor engaged by FCNSW to undertake Loading Operations.

**“Loading Operations”** means the loading of Log Products from Log Stockpiles onto a Vehicle.

**“Loading Rate”** means the amount of money payable by FCNSW to the Contractor for undertaking Loading Operations as set out in **Item 2 Schedule 4**.

**“Log Measurement Procedure”** means procedures advised by FCNSW with respect to quantifying the Tonnes delivered to Product Destinations and the quantities of Log Products subjected to Loading Operations by the Contractor.

**“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 Sort”** meansa type of Log Product or Residue Product which is segregated for haulage purposes, by one or more length, diameter and quality attributes.

**“Log Stockpile”** means an area where Log Products or other types of logs are assembled prior to loading onto a Vehicle.

**“Mandatory Equipment Requirement”** includes the specifications and functions of Equipment specified in **Item 1 Schedule 3.**

**“Market Collapse”** means:

1. 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’s obligations to supply the Log Products under a Supply Agreement; or
2. any other termination, suspension or modification of FCNSW’s obligations to supply the Log Products under a Supply Agreement for reasons other than default on FCNSW’s part.

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

**“Maximum Annual Delivery Rate”** means the rate specified in **Item 7 Schedule 1**.

 **“Maximum Quarterly Delivery Rate”** means the rate specified in **Item 7 Schedule 1**.

 **“Minimum Annual Delivery Rate”** means the rate specified in **Item 7 Schedule 1**.

 **“Month”** means a calendar month.

**“Monthly Fuel Adjustment"** means an allowance calculated in accordance with **Item 2 Schedule 5** being an adjustment to the amount payable by FCNSW to the Contractor for its Haulage Operations services during a Month as a result of changes in the price of fuel during the Month.

**“Monthly Report”** means information, including workplace incident statistics and corrective actions in the form set out in **Schedule 9**, as amended by FCNSW from time to time following notice to the Contractor.

 **“Parties”** means FCNSW and the Contractor.

**“Period”** in relation to a Haulage Plan means the period specified by FCNSW as period to during which the Haulage Plan applies..

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

**“Product Destination Schedule”** means the schedule of Product Destinations as listed in **Item 9 Schedule 1** and as amended by FCNSW from time to time following notice to the Contractor.

 **“Product Specifications”** means the specifications for Log Products detailed in **Schedule 4,** as amended by FCNSW from time to time following notice to the Contractor.

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

**"Quarterly Quantity Adjustment"** means an adjustment to the amount payable by FCNSW to the Contractor for its Haulage Operations services during a Quarter to be made when specified by, and calculated in accordance with **Item 6** **Schedule 5** and clause 14.2.1.

 **“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 14.8**.

**“Rate Review Mechanism”** means the application of movements in cost items set out in **Schedule 6.**

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

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

 **“Restricted Access Vehicles”** means a Vehicle defined as a restricted access vehicle.

**“Retention Amount”** for a Haulage Operation means 10% of the monthly payment due for hauling Log Products.

**“Safety Obligations”** means the obligations set out in **Schedule 2.**

**“Salvage Operations”** means Haulage Operations associated with expedited salvage harvesting in softwood plantations which have been damaged by wind, snow, fire or other cause.

**“Smart Device”** means a device utilising the iOS operating system capable of transmitting data including the ability to send and receive emails; 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, as listed in **Item 9 Schedule 1** and as amended by FCNSW from time to time following notice to the Contractor.

**“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 seventy percent (70%) of the Base Annual Quantity.

**“Tonne”** means green metric tonne.

**“Tonne Kilometre” or “tkm”** means a Tonne multiplied by the one way kilometres from the Harvesting Unit to a Product Destination.

**“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 vehicle used in Haulage Operations.

**“Vehicle Dispatch Equipment”** means equipment capable of capturing, storing and transferring live GPS data and route instructions to and from each Vehicle operated by the Contractor under this Agreement.

**“Week”** means a seven (7) day period commencing Sunday midnight.

**“Weekly Plan”** means a plan prepared by the Contractor for FCNSW, specifying how the Contractor plans to undertake daily haulage in order to meet the Haulage Plan.

**“Working Days”** means Business Days within a given Year on which Delivered Sale timber processors accept deliveries of Log Products hauled under this Agreement.

**“Year”** means a period of twelve (12) months commencing on 1 July.

## Construction

In this document unless the context otherwise requires:

* + 1. Words importing the singular include the plural and vice versa;
		2. Words importing any gender include the other gender;
		3. References to persons include corporations and bodies politic;
		4. References to a person include the legal personal representative, successors and assigns of that person;
		5. 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);
		6. References to this or any other document include the document as varied or replaced, and notwithstanding any change in the identity of the Parties;
		7. References to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes telex and facsimile transmission;
		8. An obligation of two (2) or more Parties shall bind them jointly and severally;
		9. If a word or phrase is defined, cognate words and phrases have corresponding definitions;
		10. 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;
		11. References to this document include its Schedules and annexures;
		12. A reference to anything includes a part of that thing;
		13. 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.

## Headings

Headings shall be ignored in construing this document.

# SCOPE OF AGREEMENT

## Subject to the terms of this Agreement:

FCNSW agrees to grant the Contractor access to the Area of Supply.

The Contractor agrees to carry out Haulage Operations and where applicable Loading Operations in the Area of Supply to deliver Log Products to be used by FCNSW to meet its obligations under the Supply Agreements.

FCNSW will pay the Contractor for its services at rates determined under this Agreement.

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.

Nothing in this Agreement shall be deemed to create a partnership between the Contractor and FCNSW.

# Duration

## Base Term

This Agreement will commence on the Commencement Date.

The Agreement shall operate for the Base Term unless extended or terminated sooner as provided in this Agreement.

## Extension

There are no extensions to this Agreement.

# compliance

## Contractor Compliance

* + 1. The Contractor must comply with:
1. The Act and all other applicable statutes and subordinate legislation;
2. the Safety Obligations;
3. the Road Transport Act 2013, including roadworthy requirements, chain of responsibility, vehicle permits and registrations;
4. The requirements of anybody lawfully having authority in relation to the subject matter of this Agreement;
5. The Codes;
6. Any relevant Haulage Plan or Harvesting Plan;
7. The conditions attached to any Licence issued to the Contractor under the Act or other license or permit issued to the Contractor by a government authority;
8. Any lawful direction given to the Contractor by an Authorised Person.
	* 1. The Contractor must ensure that all of its employees, servants, agents or subcontractors comply with the terms of this Agreement.

The Contractor acknowledges that FCNSW is committed to its obligations under the Work Health and Safety Act to provide, as far as practicable, a safe and healthy working environment for staff, contractors and visitors. Accordingly, the Contractor and any subcontractors shall at all times work in a safe manner and not put themselves, FCNSW staff, visitors or others at risk. The Contractor and any subcontractors shall comply with FCNSW’s reasonable directions in relation to compliance with FCNSW’s work health and safety management system, including completion of a WHS induction, safe work method statements (or equivalent) and other requirements as determined by specific risk.

 The Contractor’s Safety Management System (as defined in **Schedule 2**) may be subject to an independent audit as arranged by FCNSW from time to time.

## Chain of Responsibility Requirements

The Contractor:

6.2.1 Must at all times comply with the Chain of Responsibility Laws and Chain of Responsibility Requirements;

6.2.2 Will ensure its Drivers operate Vehicles allocated to carry out the Haulage Operations only on roads on which such vehicles are lawfully permitted to travel and otherwise in accordance with applicable laws;

6.2.3 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.

6.2.4 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 Operations.

6.2.5 Will ensure that its Drivers will comply with fatigue management plans as required by the Chain of Responsibility Laws.

6.2.6 Maintain at its cost all Equipment in a roadworthy, safe and fully operable state.

6.2.7 Will ensure that its Drivers take all reasonable and practicable steps to avoid a breach of mass, speed, load dimension and load restraint elements of the applicable Chain of Responsibility Law.

## 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.

# Contractor Reporting

## Daily Reporting

Each day the Contractor must provide any specified delivery data requested by FCNSW or Electronic Delivery Data downloaded from the Electronic Docket System or provided in the format specified by FCNSW.

## Periodic Reporting

If requested by FCNSW the Contractor must provide to FCNSW in the format specified by FCNSW any additional data related to Haulage Operations for a Period.

## Monthly Reporting

Within five (5) Working Days of the end of each Month the Contractor must provide by email to FCNSW a completed Monthly Report.

Within five (5) Working Days of the end of each Month the Contractor must provide by email to FCNSW a completed Chain of Responsibility Report.

## Not Used

## Environmental Reporting

* + 1. If requested by FCNSW, the Contractor must truly and correctly complete and provide to FCNSW any audit checklist supplied by FCNSW regarding the Contractors compliance with prescriptions specified in the relevant Haulage Plan and the Codes.

## Adhoc Compliance Reporting

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

1. the Contractors compliance with the Agreement and the requirements of **clause 6.1.1**;
2. any relevant licenses, permits, approvals or operator accreditations;
3. compliance of the Equipment with the operator protective structures standards specified by FCNSW;
4. currency of any insurances including any certificates of currency required under this Agreement;
5. the details of the industrial award(s) or enterprise agreement(s) for the Contractor’s employees and/or any sub-contractor’s or agent’s employees engaged in the performance of this Agreement;
6. the complete details of the Contractors Safety Management System;
7. Driver delivery timetables, Driver work diaries and Driver fatigue management plans;
8. relevant approvals and authorizations under fatigue or mass management schemes.

If requested by FCNSW the Contractor must provide Vehicles operating under this Agreement for inspection by suitably qualified inspectors to ensure roadworthy compliance with the Road Transport Act 2013 NSW.

## Failure to Report

If in FCNSW’s 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’s rights to exercise any other remedy in relation to the breach, FCNSW may;

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

# FCNSW Reporting

## Quarterly Reporting

FCNSW must endeavour to provide the Contractor with the results of the Contractor Performance Assessment within thirty (30) days of the end of each Quarter.

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.

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. The Contractor may undertake an independent audit as a means of demonstrating improved performance after a poor assessment by FCNSW.

# Plans

## Haulage Plan

On or before the night preceding the commencement of each Haulage Plan Period of the Term, FCNSW will email the Contractor the Haulage Plan for the next Period.

Each Period the Contractor must enter upon such part or parts of the Area of Supply as specified by FCNSW in the relevant Haulage Plan, with all necessary personnel and Equipment and carry out the Haulage Operations described in the Haulage Plan for that Period.

FCNSW may, after consultation with the Contractor, make amendments to a Haulage Plan to meet the reasonable requirements of a Supply Agreement holder.

The quantity of Log Products scheduled in the sum of all Haulage Plans for a Quarter must not exceed the Maximum Quarterly Delivery Rate multiplied by the Base Quarterly Quantity for that Quarter unless otherwise agreed in writing between the Parties.

## Weekly Plan

* + 1. On or before the night preceding the commencement of each Week, if requested by FCNSW, the Contractor will email FCNSW the Weekly Plan for the next Period. Where FCNSW requests that the Contractor provide a Weekly Plan and the Weekly Plan changes for any reason, the Contractor must revise the Weekly Plan and email FCNSW the revised Weekly Plan.

## Harvesting Plan

* + 1. Before the commencement of Haulage Operations from a Harvesting Unit:
		2. FCNSW must ensure that Harvesting Plans are prepared and issued to the Contractor:
		3. the Contractor must ensure that a Haulage Operations Plan is prepared and issued to FCNSW for each Harvest Unit.

The Contractor must comply with any relevant changes to instructions set out in a Harvesting Plan by FCNSW during Haulage Operations from a Harvesting Unit.

## 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 any Haulage Plan to reflect changed quantities, reasonable alternate areas of supply and Harvesting Units.

If FCNSW requires the Contractor to undertake Salvage Operations, FCNSW may at any time by notice in writing to the Contractor, amend a Haulage Plan to include Harvesting Units in which Salvage Operations are necessary and the Contractor must if required by the Haulage Plan, undertake Haulage Operations from those Harvesting Units.

# Employees, Servants, Agents and Subcontractors

## Training and Licenses

The Contractor must ensure that all its employees, servants, agents and subcontractors engaged in work under this Agreement are trained and licenced in accordance with **Item 3.3, Schedule 2**.

The Contractor 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. In addition, Contractors must ensure that relevant operators obtain the Essential Training Standards as developed by AFCA and AFPA and as updated from time to time.

## Subcontractors

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

1. remain responsible and liable at all times to carry out its obligations under this Agreement;
2. ensure that each and every subcontractor is familiar with and complies with the terms and conditions of this Agreement and the obligations of the Contractor;
3. obtain or possess the required licenses or permits referred to in **clause 0.**

d) ensure each subcontractor and the persons engaged by the subcontractor 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.

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

## Industrial Agreement

The Contractor 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.

The Contractor must ensure that any subcontractor 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 subcontractor’s or agent’s employees.

## Related Agreements

Notwithstanding anything to the contrary in this Agreement, where:

1. the Contractor is engaged under other agreements with FCNSW for harvesting, loading or haulage; and
2. due, directly or indirectly, to its performance under its other harvesting or haulage agreements with FCNSW the Actual Annual Quantity for a Year is less than the Base Annual Quantity; or the Actual Quarterly Quantity for a Quarter is less than the Base Quarterly Quantity; then
3. the Contractor shall have no claim against FCNSW, including payments under **clause 14,** related to the quantity of Log Products under this Agreement which resulted from its performance under its other harvesting, loading or haulage agreements with FCNSW.

# Insurance

## Insurance Requirements

The Contractor must take out and maintain throughout the Term, with a licensed insurance company, insurance of the following kinds:

1. Workers compensation insurance to the extent required by the law of the State of New South Wales.
2. Public liability insurance being a minimum of twenty million dollars ($20,000,000.00) per claim.
	* 1. The insurance policy referred to in **clause 11.1.1(b)** must note the interest of FCNSW in the policy.
		2. Any insurance policy referred to in **clauses 11.1.1 (b)** must contain a provision requiring the insurer, whenever the insurer gives to or serves on the Contractor a notice of cancellation or any other notice under or in relation to the said policy of insurance, at the same time to inform FCNSW in writing that the notice has been given to or served on the Contractor and ensure that notice of any claim is given by the insurer to FCNSW and that FCNSW is kept fully informed of subsequent action and developments concerning such claim.
		3. The Contractor must produce to FCNSW, within seven days of being requested in writing to so do, certificates of currency and such other evidence of the currency of any of the above insurances as FCNSW may require.

# Equipment

## Equipment Requirements

The Contractor must own, hire or lease and meet all operating costs including installation and maintenance of the Equipment and Mandatory Equipment Requirements specified in **Item 1 Schedule 3**, and any other equipment necessary to perform the work under this Agreement.

The Equipment must comply at all times with any Mandatory Equipment Requirements set out in **Item 1 Schedule 3**,and with any specification reasonably nominated by FCNSW.

## Equipment Amendments

Any additions to or deletions to the Equipment or Mandatory Equipment Requirements specified in **Item 1 Schedule 3** must be approved by FCNSW prior to their use in Haulage Operations and **Item 1 Schedule 2** amended to reflect their addition or deletion.

The use of any equipment other than the Equipment or the use of equipment that does not meet the Mandatory Equipment Specifications must be approved by FCNSW in writing prior to their use in Haulage Operations. Such written agreement must include the date by which the Mandatory Equipment Requirement for any item of equipment will be met and Schedule 2 amended to reflect their addition or deletion.

# Operations

## Supervision

The Contractor must appoint a competent person or persons as a Haulage Supervisor or Haulage Supervisors to, when requested by FCNSW:

1. represent the Contractor on all issues relating to payment, general administration, scheduling and coordination of Haulage Operations and the implementation of the Haulage Plan.
2. represent the Contractor in person and to be present at locations where Haulage Operations under this Agreement are taking place.

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

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

The Haulage Supervisor of any Haulage Operations is deemed to be authorised by the Contractor to make decisions and to receive directions from FCNSW on the Contractor’s behalf on all matters relating to the conduct of Haulage Operations under this Agreement.

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.

## Before Haulage Operations Commence

Prior to the commencement of Haulage Operations from a Harvesting Unit the Contractor must inspect roads and loading bays which are proposed to be used to ensure:

1. 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.
2. that any proposed road closures do not unnecessarily inhibit the haulage of Log Products; and
3. that the proposed haulage route represents the lowest cost option to FCNSW.

## Availability for Haulage and Loading Operations

Where requested by FCNSW, the Contractor must make its haulage vehicles available in any part of the Area of Supply for Haulage Operations.

Where requested by FCNSW, the Contractor must permit loading of its haulage vehicles by a Harvest Contractor or a Loading Contractor for the quantity of Log Products set out in a Haulage Plan.

Where requested by FCNSW, the Contractor must conduct Loading Operations for another person engaged by FCNSW to haul Log Products from the Area of Supply.

## Cleaning up of Log Stockpiles

Where instructed by FCNSW, the Contractor must permit loading of all Log Products including part loads from individual Log Stockpiles in each Harvesting Unit before ceasing Haulage Operations from the Harvesting Unit.

If the Contractor fails to follow FCNSW instruction in **clause 0,** FCNSW may elect to:

1. employ another person to perform the necessary work and recover the costs and expenses of employing that person against the Contractor; or
2. recover the lost value of the Log Products by making deduction from payments due to the Contractor under this Agreement.

## Haulage Operations

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 in the Haulage Operations Plan for the particular Harvesting Unit.

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 or target notified times for specific Product Destinations.

## Incorrect Product Destination

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.

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.

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

If in FCNSW’s reasonable opinion, the Contractor has delivered Log Products to the wrong Product Destination or has not complied with the Log Measurement Procedure as it relates to Electronic Delivery Data , 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.

## Electronic Docket System

The Contractor must use, maintain and keep secure those Smart Devices that are reasonably necessary to support FCNSW’s Electronic Docket System

* + 1. All costs relating to the supply, installation and operation of Smart Devices for FCNSW’s Electronic Docket System will be at the expense of the Contractor.

## Completion of Haulage Operations

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.

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 an accumulation of issues upon completion.

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

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. In such a case FCNSW may deduct the costs and expenses from the Retention Amount for the relevant work and account to the Contractor for the balance (if any) at the first monthly payment date following completion of the necessary work.

# Rates and Payments

## Haulage Rates

Subject to **clause 14.4.1**, **clause 14**.**5 and** **clause 14.13** the Haulage Rates payable by FCNSW to the Contractor for its services under this Agreement are the applicable Base Haulage Rates calculated and payable under **clause 14.2**.

Haulage Rates for quantities greater than 70% and less than the Maximum Quarterly Delivery Rate multiplied by the Base Quarterly Quantity will be those calculated in accordance with this Agreement.

If the Parties agree to schedule quantities in a Quarter in excess of the Maximum Quarterly Delivery Rate multiplied by the Base Quarterly Quantity as per **clause 0** or in a Year in excess of the Maximum Annual Delivery Rate multiplied by the Base Annual Quantity the Parties must negotiate in good faith to reach agreement on revised Haulage Rates on the basis of:

1. The additional variable costs the Contractor is likely to incur by hauling the increased quantity;
2. The marginal benefit of the additional quantity over the Contractors fixed costs.

## Calculation and Payment of Haulage Rates and Loading Rates

FCNSW must calculate payments due to the Contractor for Haulage Operations at the end of each:

* + - 1. month by applying the relevant Base Haulage Rates to the quantity of Log Products delivered to Product Destinations during the month and except for an incomplete Month, by adding or subtracting any Monthly Fuel Adjustments;
			2. Quarter, except for an Incomplete Quarter, by adding or subtracting any Quarterly Quantity Adjustments.
			3. Year by adding or subtracting any Annual Quantity Adjustment.

14.2.2 FCNSW must calculate payments due to the Contractor for Loading Operations at the end of each month by applying the Loading Rates to the quantity of Log Products that the Contractor loaded onto Vehicles during the month.

* + 1. FCNSW must pay the Contractor any payment referred to in **clause 0 and 14,2,2** within twenty one (21) days of the end of the calendar month to which it relates.

FCNSW must provide a statement to the Contractor detailing:

1. the quantity and type of Log Products delivered during the previous month to each Product Destination from each Harvesting Unit;
2. the applicable Base Haulage Rates;
3. , any Monthly Fuel Adjustment, Quarterly Quantity Adjustment, Annual Quantity Adjustment,
4. the quantity of Log Products that were subject to the Contractor’s Loading Operations;
5. the applicable Loading Rates; and
6. the amount due and payable to the Contractor for that month.

## Quantity Determination for Payment

If the net weight of any load of Log Products hauled by the Contractor together with the tare weight of the haulage vehicle exceeds the Gross Combination Mass of the haulage vehicle as measured at the Product Destination for the Log Products, the Contractor will not be paid for the excess and the quantity of Log Products applied to Base Haulage Rates in **clause 14.2.1 (a)** and if applicable the Loading Rateswill be the applicable Gross Combination Mass less the tare weight of the Vehicle.

 The quantity of Log Products subject to Loading Operations and/or hauled by the Contractor will be determined in accordance with the Log Measurement Procedure.

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

14.3.4. 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 for vehicle configurations.

## Application of Cross Loading Rates

Where FCNSW is of the reasonable opinion that haulage from a particular Harvesting Unit to a particular Product Destination is capable of being achieved as part of a Cross Load Trip, FCNSW may, after consultation with the Contractor, determine that the haulage journey be treated as part of a Cross Loading Trip and the Haulage Rate for that a section of the journey be calculated as a Cross Loading Rate.

If FCNSW applies a Haulage Rate calculated under the provisions of **clause 14.4.1 and 14.4.2** FCNSW must include in the Haulage Plan those haulage tasks which are necessary for the Contractor to be capable of reasonably performing the relevant haulage tasks as part of a Cross Load Trip to which Cross Loading Rates apply.

If the Contractor disputes the reasonableness of FCNSW's decision to apply Cross Loading Rates under **clause 14.4.2**, the Parties must negotiate in good faith to reach agreement on:

1. amendments to the Haulage Plan which are necessary for the Contractor to be reasonably capable of performing the relevant haulage tasks as part of Cross Load Trips to which Cross Loading Rates apply; or, if that is not feasible; and
2. amendments to the Haulage Rates necessary to reflect the Cross Loading Trips which are reasonably capable of being performed by the Contractor.

## Haulage Rates for Salvage Operations

FCNSW may require the Contractor to undertake Haulage from Salvage Operations within the Area of Supply.

The Parties acknowledge the Haulage Rate Schedule at the commencement of this Agreement will also apply for Haulage from Salvage Operations.

If FCNSW requires the Contractor to undertake Salvage Operations that are not covered by the Haulage Schedule the Parties must negotiate in good faith to reach agreement on Haulage Rates to apply. If the Parties are unable to reach agreement within five (5) Working Days of FCNSW’s notification to the Contractor of the need to undertake Salvage Operations, FCNSW may determine the Haulage Rates to apply provided always that the rates give the Contractor fair and reasonable remuneration for the services provided.

Any negotiation or determination pursuant to **clause 0** must be based on the market rate for haulage from the Harvesting Units comprising the Salvage Operations and any reasonable additional costs which will be incurred by the Contractor including, without limitation, machinery relocation costs, costs associated with working away from the Contractor’s home base (if relevant). Salvage allowances must be paid within 21 days from the end of the calendar month.

Log Products made available for haulage by the Contractor from Salvage Operations shall be made available as part of the Base Annual Quantity.

## Goods and Services Tax

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

FCNSW shall raise RCTIs in respect of all payments made to the Contractor, and RCANs 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:

1. copies of these RCTIs and RCANs will be sent by FCNSW to the Contractor with the payment or adjustment to which they relate;
2. the Contractor warrants that it is registered for GST and will notify FCNSW if that registration is cancelled;
3. FCNSW warrants that it is registered for GST and will notify the Contractor if that registration is cancelled.

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 RCTIs.

## Liquidated Damages

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

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 within ninety (90) days after the end of the Year a sum of money calculated by the Liquidated Damages Formula.

Any sum payable to the Contractor under **clause 14.7** is payable as pre-estimated and liquidated damages and not as a penalty.

The Contractor may not make any claim against FCNSW in relation to its failure to make Haulage Operations work or Loading Operations work available to it under this Agreement except as provided in this **clause 14.7** .

## Annual Review of Haulage Rates and Loading

The Base Haulage Rates for each Year commencing following the Commencement Date shall be the Base Haulage Rates for the previous Year varied by the percentage determined by FCNSW by applying the Rate Review Mechanism.

 FCNSW will endeavour to provide to the Contractor, prior to the commencement of a Year, details of the calculations of the Rate Review Mechanism and the resulting amendments to the Base Haulage Rates to apply from 1 July in the following Year.

Loading Rates will be varied each Year at the same time and in the same proportion as the Haulage Rates are varied.

## 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’s opinion is an equivalent and suitable alternative.

## Special Review

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 and prior to 1 March in any Year. Neither party is obligated to agree to any adjustment to the Base Haulage Rates.

At any time during the Term FCNSW estimates that the Actual Annual Quantity for the remainder of the Agreement will be less than the Minimum Annual Delivery Rate multiplied by the Base Annual Quantity at the commencement of the Agreement, FCNSW may request that the Parties commence good faith negotiations to reach agreement on:

1. One off costs of disposal of staff and Equipment to reflect the forecast reduction in work;
2. Amendments to the Base Annual Quantity and Base Haulage Rates to reflect changes to the reduced forecast level of activity.

If the Parties are unable to reach agreement within ten (10) Working Days of a **Clause 14.10** request, FCNSW may determine amendments to the Base Annual Quantity, **Schedule 1** and **Schedule 5**, provided always that:

* + - * 1. the amendment to the Base Annual Quantity is consistent with its estimate of the Actual Annual Quantity; and
				2. amendments to the Base Haulage Rates give the Contractor fair and reasonable remuneration for the services provided; and
				3. FCNSW offers a payment to the Contractor that fairly compensates the Contractor for one off costs of disposal of staff and Equipment to reflect the amended Base Annual Quantity and Base Haulage Rates.

Despite any other consideration the rates agreed under this **clause 14.10** must, at all times, remain competitive and must not exceed Market Rates.

## Centralised Dispatch

During this Agreement FCNSW may request and the Parties must negotiate in good faith to reach agreement on the implementation of Centralised Dispatch and:

1. whether to amend or delete **clause 9.1,** specifically the requirement to issue a Haulage Plan;
2. whether to amend **clause 14** by adding a new monthly Base Haulage Rate review mechanism for the monthly adjustment of Base Haulage Rates on the basis of changes in achieved loaded running and vehicle utilisation;
3. the required Vehicle Dispatch Equipment.

 In default of a **clause 14.11.1** agreement FCNSW may:

1. determine and implement any amendment, deletion of or addition to **clause 9.1** to facilitate Centralised Dispatch,;
2. determine and implement amendments to **clause 14** in relation to the addition of a mechanism for monthly adjustment of Base Haulage Rates based on changes to achieved loaded running and vehicle utilisation; and
3. specify the Vehicle Dispatch Equipment the Contractor must acquire to facilitate the operation of the Centralised Dispatch;

as it considers necessary.

Any agreement or determination under **clause 14.11.1** in relation to a monthly mechanism for the adjustment of Base Haulage Rates based on changes to loaded running and vehicle utilisation must result in no net financial disadvantage to the Contractor as a direct result of the implementation of Centralised Dispatch taking into account the following factors:

1. the level of loaded running and vehicle utilisation achieved by the Contractor since the commencement of the Agreement;
2. the modelled marginal financial benefit of improvements in loaded running and vehicle utilisation over the Contractors fixed costs.

## Continuous Improvement

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.

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).

Other than as provided in **clause 14.10**, if the taking of the cost reduction steps described in **clause 0** 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.

## Haulage rates outside of Base Haulage Rates

FCNSW may require the Contractor to undertake Haulage Operations to a Product Destination for which there are no Base Haulage Rates.

If FCNSW makes a request under **clause 14.13.1**, the Parties must negotiate in good faith to reach agreement on applicable Base 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.

Any negotiation or determination pursuant to **clause 14.13.2,** must take into account;

1. The existing Base Haulage Rates for equivalent haulage distances;
2. the Contractor’s hourly earning capacity per haulage unit carrying out Haulage Operations for which it is paid the Base Haulage Rates; and
3. bona fide Market Rates.

# Suspension

## Suspension by FCNSW

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:

1. it is necessary for the protection or safety of any person;
2. 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;
3. the Contractor has breached any of the requirements of **clause 6.1.1**;
4. the Contractor has breached **clause 6.1.1** and the breach relates to the Contractor or any of its employees, servants, agents or subcontractors committing an offense under section 38 or section 83 of the Act;
5. 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;
6. 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
7. the Contractor is not performing in compliance with the Contractor’s health and safety obligations under this Agreement.

FCNSW notice of suspension under **clause 0** 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;

1. 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
2. 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
3. if the suspension is for a breach that FCNSW’s opinion would entitle it to terminate this Agreement thenno later than the sooner of:
4. 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**.

## Suspension by the Contractor

The Contractor may from time to time during the Term 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.

FCNSW must in its sole discretion determine whether the basis of the notice served under **clause 0** is necessary or reasonable and if it so determines it must notify the Contractor in writing.

If FCNSW determines that the suspension requested by the Contractor under clause **0** is not necessary or reasonable it must notify the Contractor in writing giving reasons for the determination.

Where FCNSW has determined to suspend the whole or any part of the Agreement under 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.

## 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.

#  Termination

## By FCNSW

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

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 fifteen (15) Business Days.

(b) If, in any Year, for reasons other than the direction of FCNSW the Contractor hauls less than 70 percent of the lesser of:

(i) the Base Annual Quantity; and

(ii) the quantity made available by FCNSW for haulage in Haulage Plans.

1. If, in any two (2) consecutive Years, for reasons other than the direction of FCNSW, the Contractor hauls less than the Minimum Annual Delivery Rate multiplied by the lesser of:
	1. the Base Annual Quantity; and
	2. the quantity made available by FCNSW for haulage in Haulage Plans.
2. If the Contractor suffers an Insolvency Event.
3. 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 0** 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.
4. Where the Contractor has committed three breaches of material terms of this Agreement (as defined in **clause 0**) which have been notified in writing by FCNSW in any period of six (6) months, whether or not those breaches have been remedied.
5. 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.

## By the Contractor

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

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 16.2** a 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.
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.

## Consequences of Termination

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

# Taking Over Contractor’s Obligations

## Contractor unable to perform

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.

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 0** 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.

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.

# General

## 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.

## Assignment

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.

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 subclause. 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.

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

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.

## Damage to Property

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 subcontractors in the performance of this Agreement.

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.

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.

## Indemnity and liability

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.

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 performance by the Contractor of this Agreement and any acts or things done in pursuance of the Agreement by the Contractor or any of his subcontractors except where the action, proceedings, claims, demands, costs and expenses is in connection with or arises out of a negligent act or omission of FCNSW.

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.

## Force Majeure

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.

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:

1. 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;
2. 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;
3. 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;
4. 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.

Despite any other provision of this Agreement if FCNSW is required to pay liquidated damages or Haulage Rates other than the Base Haulage Rates by reason of Force Majeure reducing the quantity of Log Products harvested in the Area of Supply, FCNSW shall be deemed for the purposes of **clause 0** to be prevented from performing its obligations under this Agreement to make such payments by reason of Force Majeure.

## 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.

## Settlement of Disputes

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 Disputes Centre (ADC) to appoint a mediator and the mediator will be so appointed.

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

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

Any arbitration must be conducted by a person acceptable to the Parties but if the Parties are unable to agree to the appointment of an acceptable person within fourteen (14) days of one party giving the other a written nomination of a suitable person or persons, then a party may request ADC, to appoint an arbitrator and the arbitrator will be so appointed. Any arbitration must be undertaken in accordance with, and subject to, ADC’s Rules for Domestic Arbitration.

The Arbitrator or some person appointed on the Arbitrator’s behalf may investigate the Contractor'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 Contractor 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.

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

In any dispute concerning a determination by FCNSW, the issue for consideration by the Arbitrator shall be limited to whether the determination in dispute (the “disputed item”), was reasonably open to FCNSW considering the factors it was required to take into account in determining the disputed item. To avoid any doubt the Arbitrator may not re-determine the dispute item.

If an Arbitrator determines the disputed item was not reasonably open to FCNSW then FCNSW’s determination will be void from the start and FCNSW must promptly re-determine the disputed item which will then apply from the first date the dispute item was originally intended to apply.

## Costs and Expenses

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

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

## 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.

## 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:

* + 1. necessary for FCNSW to reveal details in order to establish FCNSW costs of delivering or causing the delivery of Log Products to a Supply Agreement holder;
		2. is required to be disclosed by law.

## 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 Vehicle but lost or damaged prior to their delivery to a Product Destination.

## Rights of Other Persons

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.

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 Area of Supply).

## 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.

## Variation of Conditions

This Agreement embodies the total understanding of the Parties.

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.

## 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.

## Cooperation

The Parties must consult from time to time and co-operate with each other for the purpose of, so far as possible, 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 other harvesting or haulage contractor 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 other harvesting or haulage contractor.

## Notice

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**.

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

1. 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;
2. If posted to any of the above addresses - on the second business day after posting;
3. 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.

## Government Information (Public Access) Act 2009

* + 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**.

 (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.

* + 1. Any notice sent shall be deemed to have been properly served:

 (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.

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.

Any failure by the Contractor to comply with any request pursuant to **clause 18.18.1** or **clause 0** 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.

# EXECUTED as an Agreement

|  |
| --- |
| Executed for and on behalf of FCNSW |
| Delegate Name  |  |
| Delegate Signature |  |
| Witness Name |  |
| Witness Signature |  |
| Date |  |

|  |
| --- |
| Executed for and on behalf of the Contractor  |
| Director(s) Name  |  |
| Director(s) Signature |  |
| Witness Name |  |
| Witness Signature |  |
| Date |  |

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

**Schedule 1 – Details**

**Item 1 – Date of Agreement**

|  |  |
| --- | --- |
| Date of Agreement |  |
| Contract Number |  |

**Item 2 – Contractor Details**

|  |  |
| --- | --- |
| Company Name |  |
| Name(s) of Principal(s) |  |
| ABN |  |
| ACN |  |
| Business Address |  |
| Telephone Number |  |
| Email |  |

**Item 2 (cont.) – FCNSW Details**

|  |  |
| --- | --- |
| Title of Contact Person |  |
| Business Address |  |
| Telephone Number |  |
| Email |  |

**Item 3 – Commencement Date**

|  |  |
| --- | --- |
| Commencement Date | 1 August 2019 |

**Item 4 –Term**

|  |  |
| --- | --- |
| Base Term | 4 years |

**Item 5 – Not Used**

**Item 6 – Base Annual Quantity**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **First Year** | **Full Year** | **Final Year** |
| Tonne Kilometres | 100% Tkm | 100% Tkm | 100%Tkm |

**Item 7 – Delivery Rate Limits**

|  |  |
| --- | --- |
| Maximum Quarterly Delivery Rate | **120%** |
| Maximum Annual Delivery Rate | **110%** |
| Minimum Annual Delivery Rate | **90%** |

**Item 8 – Area of Supply**

|  |  |
| --- | --- |
| Operation Type | Description of Area of Supply |
| Haulage Operations | All softwood plantations within the Bombala and Bathurst / Oberon regions |
| Salvage Operations | All softwood plantations within the Bombala and Bathurst / Oberon regions |

**Item 9 - Product Destinations and Supply Agreements**

|  |  |
| --- | --- |
| **Product Destination** | **Supply Agreements** |
| Visy Pulp and Paper.Tumut, NSW | VPP TSA, 2003 |

|  |  |
| --- | --- |
| **Quarter** | **% of Base Annual Quantity** |
| July to September | 27.0% |
| October to December | 24.0% |
| January to March | 24.0% |
| April to June | 25.0% |

**Item 10 - Base Quarterly Quantity Schedule**

**Schedule 2 – Safety Obligations**

1. **Definitions**

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

**"construction work"** has the same meanings given to that term under the Work Health and Safety Regulation 2017 (NSW)**.**

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

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

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

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

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

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

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

**"principal contractor"** has the same meanings given to that term under the Work Health and Safety Regulation 2017 (NSW).

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

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

"**WHS Laws**" means:

(a) Work Health and Safety Act 2011 (NSW), as amended from time to time;

(b) Work Health and Safety Regulation 2017 (NSW) as amended from time to time;

(c) Work Health and Safety (Mines and Petroleum Sites) Act 2013 (NSW), as amended from time to time;

(d) Work Health and Safety (Mines and Petroleum Sites) Regulation 2014 (NSW), as amended from time to time

(e) any Australian Standards and any ISOs that are applicable and relevant to any work performed pursuant to this Agreement;

(f) any Codes of Practice that are applicable and relevant to the work performed pursuant to this Agreement; and

(e) any other obligations imposed or standard prescribed by any other Act, Regulation, Australian Standard, Code of Practice, Order, or any other instrument creating legal obligations or prescribing standards relevant to work performed pursuant to this Agreement.

**“WHS Plan”** means a plan prepared in accordance with clause 3.5 of this Schedule

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

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

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

1. **Contractor Obligations**

**2.1 General**

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

**2.2 Management and Control**

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

**2.3 Principal Contractor where Construction Work is Undertaken**

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

(a) the FCNSW engages the Contractor as principal contractor in respect of the work pursuant to this Agreement;

(b) the FCNSW authorises the Contractor to have management and control of each workplace which the work pursuant to this Agreement is to be carried out and to discharge the duties of a principal contractor under the WHS Laws;

(c) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Laws; and

(d) the Contractor's engagement and authorisation as principal contractor will continue while ever any construction work is carried out during the Term,

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

**2.4 Warranty**

The Contractor represents and warrants that:

(a) it has given careful, prudent and comprehensive consideration to the work, health and safety implications of the work to be performed by it pursuant to this Agreement; and

(b) the proposed method of performance of that work complies with, and includes a system for identifying and managing work, health and safety risks which complies with the WHS Laws.

1. **Safety Management Systems**
	1. **Hazard Identification, Risk Assessment and Control**

The Contractor:

(a) must maintain and apply a Safety Management System which must as a minimum comply with all WHS Laws applicable to the Contractor;

(b) must provide copies of documents recording the Safety Management System to FCNSW if requested;

(c) must not, and must do all that is reasonably practicable to ensure that its subcontractors and any other person engaged by the Contractor do not, at any time, cause FCNSW to be in contravention of a WHS Law or any other law;

(d) acknowledges that, as at the commencement of the Term, it has systems (including the Safety Management System), processes, practices and procedures in place which address and mitigate the risks involved in the performance of work pursuant to this Agreement (“Contractor Risk Controls”):

 (e) during the Term maintain and apply the Contractor Risk Controls.

**3.2 Where a hazard is identified**

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

(a) immediately notify the FCNSW Representative, detailing the hazard;

(b) follow all instructions and directions of the FCNSW Representative; (if any) and take all reasonable steps to eliminate or minimise the risks to health, work and safety associated with the identified hazard; and

(c) provide to the FCNSW Representative within 10 working days of discovery of the hazard, details of any updates to the Safety Management System or Contractor Risk Controls which identifies the hazard and describes the risk mitigation strategies necessary to address the related work, health and safety risks.

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

**3.3 Training and Competency and Licensing**

The Contractor shall:

(a) ensure that if the WHS Laws require that:

(i) a person:

A. be authorised or licensed (in accordance with the WHS Laws) to carry out any work at the workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or

B. has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Laws); or

(ii) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace plant or substance, or work is so authorised or licensed;

(b) not direct or allow a person to carry out work or use plant or substance, at a workplace unless the requirements of subparagraph (a) are met (including any requirement to be authorised, licensed, qualified or supervised); and

(c) if requested by FCNSW, or required by the WHS Laws, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work, health and safety (as the case may be) to the satisfaction of FCNSW before the Contractor or its subcontractors or any other person engaged by the Contractor for the purpose of this Agreement commence such work.

**3.4 WHS Inductions**

(a) The Contractor shall ensure that any Workers of the Contractor, its subcontractors, any other person engaged by the Contractor for the purpose of this Agreement and any FCNSW Workers who will perform work on the Contractor Site:

1. participate in safety-related induction training or site induction briefings provided by the Contractor for the Contractor Site; and
2. participate in any additional safety-related induction or site induction briefings, as required, provided by FCNSW.

(b) The Contractor shall ensure that all persons attending the safety related training or site induction briefings sign an attendance form and a site safety induction form where applicable.

**3.5 Site Management**

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

1. the names, positions and health and safety responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the work performed pursuant to this Agreement;
2. the arrangements in place between any person conducting a business or undertaking at the Contractor Site, for consultation, corporation and co-ordination of activities in relation to compliance with their duties under WHS Laws;
3. WHS risk management through:

appropriate methodologies;

WHS Risk Registers;

processes and practices to manage specific hazards identified in the WHS Risk Register and Contractor Risk Controls; and

safe work method statements.

1. the arrangements for the collection and any assessment, monitoring and review of safe work method statements at the Contractor Site;
2. hazard and incident reporting, investigation and management;
3. induction, training and competency;
4. any Contractor Site specific health and safety rules, and the arrangements for ensuring that all persons at the Contractor Site are informed of those rules;
5. emergency management;
6. first aid;
7. inspections and housekeeping;
8. audits;
9. document management and control;
10. contractor management;
11. management of change;
12. management review;

when work pursuant to this Agreement is being performed at the Contractor Site how:

public access to the Contractor Site will be prevented;

public access through a Contractor Site, when necessary will be enabled and controlled;

construction traffic (pedestrian and vehicular) will be controlled at its interface with public traffic;

appropriate amenities are made available;

risks associated with electricity supply are managed;

risks associated with exposure to the elements are managed;

adequate light is provided; and

risks associated with existing services are managed.

**3.5 Consultation Co-operation and Co-ordination**

FCNSW and the Contractor:

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

FCNSW Workers;

Contractor Workers and Subcontractor Workers; and

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

**3.6 Reporting Incidents**

(a) The Contractor must notify FCNSW:

(i) immediately of any Notifiable Incident; or

(ii) Within twenty four (24) hours of a Loss Time Incident, Medical Treatment Incident or a Near Miss which is not a Notifiable Incident.

(b) Within seven (7) days of a Reportable Incident, the Contractor must forward a report of the incident and if requested by FCNSW an incident investigation report as soon as reasonably practical. FCNSW may request to participate in or observe the Contractors investigation, or undertake its own investigation. The Contractor must assist FCNSW to complete its own investigation.

(c) The Contractor shall in accordance with the WHS Laws report to the relevant work health and safety or mines regulator any Notifiable Incident that involves:

1. Contractor or Subcontractor Workers on Contractor Site;
2. FCNSW Workers on Contractor Site; or
3. Contractor or Subcontractor Workers on FCNSW property outside the Contractor Site

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

1. The Contractor shall in respect of any such Notifiable Incident:
2. immediately provide FCNSW with a copy of the notice required to be provided to the relevant work health and safety or mines regulator;
3. undertake and complete an investigation into the Notifiable Incident as soon as reasonably practical after notification to the relevant work health and safety or mines regulator;
4. promptly provide FCNSW with a copy of the investigation report relating to the Notifiable Incident upon completion of such investigation;
5. promptly provide FCNSW with copies of any notice(s) or other documentation issued by the work health and safety or mines regulator; and
6. as soon as reasonably practical after the date of notification to the relevant work health and safety or mines regulator, provide FCNSW with a summary of the related investigations, actions to the taken and any impact on the performance of work pursuant to this Agreement that may result from the Notifiable Incident.
7. **Contractor Site Access**

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

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

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

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

1. **Indemnity**

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

**Schedule 3 – Equipment and** **mandatory Equipment REquirement**

**Item 1 – Equipment and Mandatory Equipment Requirement**

| **Equipment (Make/ Model and Year of Manufacture** | **Mandatory Equipment Requirement** |
| --- | --- |
| **Prime Mover(s)** | * UHF radio enabled to transmit and receive 80 channels
* GPS fitted, and connected to a service provider that will provide:
* Geo-fencing of high risk areas (e.g. corners, school bus routes, intersections)
* Event reporting on driver behaviour.
* In-cab, real time alerts provided to the driver to warn of heavy braking, speeding and harsh cornering events, driver fatigue and driver distraction.
* Reporting of speed that is contrary to accepted limits.
* Spatial and temporal reporting of shift start and finish, trip distance, rest times, loaded and unloaded status, location of stops.
* Provision of event data (in 1 second intervals) (speed, position, engine telematics, g-force) just prior (2 mins) and just proceeding (30 seconds) an accident. Ability to analyse events (speed, and position) just prior to incident / accident in at least 1 second intervals
* Data made available to FCNSW
* Exception reporting as and when requested by FCNSW
* Anti-lock braking system and stability control on all Trucks/ Prime Movers
* Central Tyre Inflation (drive wheels only)
* Forward facing cameras with the ability to store at least 20 minutes of rolling video and download data electronically to a personal computer.
* Cabin guarding/systems (fitted to either the prime mover or trailer) manufactured to applicable standards which protect the occupants in the event of a load shifting.
* Daytime running lights minimum ADR76
* 6.5 tonne steer axle standard incorporating FUPs, ADR 80/01 (Euro IV) and cabin specifications of UN ECE Regulation No.29 on all Trucks/ Prime Movers
* Driver facing camera with the ability to store at least 20 minutes of rolling video and download data electronically to a personal computer.
* On-board scales that allow load measurement to an accuracy of +/-250kg
* Smart Device
* Must maintain a Static Rollover Threshold (SRT) of greater than 0.35g
 |
| **Trailer(s)** | * Electronic Roll-over Protection system (ERP) on all trailers. The system must:
	+ Comply with UNECE Reg 13 Annex 21;
	+ Have data storage and reporting capability to show number of system activations and when they occurred. This information must be made available to FCNSW in a readable format, as and when required
	+ Provide an in-cab audible alert when the system is triggered by an event
* A trailer design that maximise the units Static Roll-over Threshold (SRT) and allows it to operate at a minimum SRT 0.35g.
* Folding or piggyback trailers on 7, 8 and 9 axles vehicles are preferable, however based on the merits presented to FCNSW in submissions, proposals for non-piggyback trailers may be accepted.
* LED lights on brake, tail, indicator and clearance lights
* On-board weight measuring system with an accuracy of +/- 250kg, with an electronic display of weight capable of measuring each axle group individually.
* Automatic load restraint tensioning applying continuous tension as the load settles during a journey and incorporates load restraint release system that enables the driver to release the load restrain systems from the driver’s side of the vehicle.
* Blocking devices or additional restraints to meet the draft Forestry Log Haulage Registered Code of Practice.
* Air bag suspension
 |
| Loading | * The loading cabin must be equipped with an operator protective structure that complies with SAEJ1356 or SAE J2267.
* The truck carrying the loader must be equipped with stabiliser legs.
* Smart Device
* Falling object, roll over, and operator protective structures that meet FCNSW Safety Standard 1.1.7.
* Loader grapple / beak to have adjustable pressure capability.
* Global Positioning System (GPS) configured to provide in the required format data as specified in Item 2 Schedule 3.
 |
| Haulage Site/Loading Site Fire Fighting Requirements | As per Forest Practices Code  |
| Office/Home Base Electronic Equipment | Personal computer with internet connection and an email address.  |

**Item 2 – GPS Data Requirements**

If requested GPS data is to be provided to FCNSW in CSV file format or GPS exchange file format (GPX) as the case may be and as a minimum provide the following information:

* The vehicle registration;
* The starting location of each trip either from the depot, harvest unit, rest stop or customer;
* The start date and time of each trip;
* The end location of each trip, either from the depot, harvest unit, rest stop or customer;
* The end date and time of each trip
* The time taken (duration) for each trip;
* The distance travelled for each trip;
* Whether the trip was loaded or unloaded;
* The location of stops;
* The time stopped;
* The reason for the stop, i.e. rest, loading, unloading.

**Item 3 – Accreditation by the National Heavy Vehicle Accreditation Scheme**

In addition to Mandatory Equipment, the Contractor must be accredited for the duration of the Agreement’s term by the National Heavy Vehicle Accreditation Scheme (NHVAS) to operate (as a minimum) to Concessional Mass Limits (CML). FCNSW may request the Contractor to provide certificate for the duration of the term.

In the case where Higher Mass Schemes are in place for this Agreement, FCNSW may request the Contractor to provide certificate of accreditation by the National Heavy Vehicle Accreditation Scheme (NHVAS).

Schedule 4 – Product Specifications

*INSERT RELEVANT MA LOG SPECIFICATIONS*

Schedule 5 – haulage rates

**Item 1 – Base Haulage Rates ($/Tonne) –**

**Item 2 –** Base Loading **Rates ($/Tonne) -**

|  |  |
| --- | --- |
| **Loading Rate ($/Tonne)** |  |

**Item 2 - Monthly Fuel Adjustment**

1. At the end of each Month the monthly payment will be adjusted up or down by the Monthly Fuel Adjustment.
2. The Monthly Fuel Adjustment for a Month will be calculated by the following formula:

**MFA = (MNP - NP)/NP x W% x MCP-FTCA**

Where:

* **‘MFA’** means the Monthly Fuel Adjustment for the Month;
* ‘**Fuel Cost Item’** means the Cost Item 2: Fuel specified in **Schedule 6;**
* **‘MNP’** or **‘Monthly Net Price’** means the daily average for the Month of the Fuel Cost Item;
* **‘NP’** or **‘Net Price’** means the indicator rate for the Fuel Cost Item current at the time of the last review of Haulage Rates. Prior to the first Rate Review the Net Price will be the base indicator rates listed in schedule 6.
* **‘W%’** or **‘Fuel Cost Item Weighting’** means weighting for the Fuel Cost Item in accordance with **Schedule 6** following the conclusion of the last review of Haulage Rates under **clause 14.8;** Prior to the first Rate Review the Net Price will be the base indicator weightings listed in schedule 6.
* **‘MCP’** or ‘**Monthly Contractor Payment’** means the total amount of money paid or payable to the Contractor for Haulage Operations during the Month without taking into account any Monthly Fuel Adjustment.
* **FTCA** or **Fuel Tax Credit Adjustment** means the estimated Tax Credit entitlement based on the following:

 **FTCA = Off Road kilometres x 2 x (OFFRTC – ORTC) x FC**

* **FC** is the Fuel Consumption expressed in litres per kilometre.
* **Off Road kilometres** is the distance travelled in the Month off road (i.e. on roads constructed and maintained by the forest industry or roads deemed to be Private).
* **OFFRTC** is the Off Road Tax Credit in cents per litre (i.e. $0.412/litre at 1 January 2019)
* **ORTC** is the On Road Tax Credit in cents per litre (i.e. $0.154/litre at 1 January 2019)
1. The following worked example will serve as a model for the calculation of the Monthly Fuel Adjustment:

|  |  |  |
| --- | --- | --- |
| **Item** | **Reference** | **Value** |
| Base Price($/litre) | 1-Jul-10 | $1.21900 |
| GST($/litre) |  | $0.11082 |
| On Road Tax Credit | 1-Jul-10 | $0.12643 |
| Net Price($/litre) | NP | $0.98175 |
| Monthly Net Price($/litre) | MNP | $0.80000 |
| Fuel Cost Item Weighting | W% | 24% |
| Monthly Contractor Payment | MCP | $250,000 |
| Fuel Tax Credit Adjustment | FTCA | $178.50 |
| Monthly Fuel Adjustment Formula | MFA | QFA = (QNP - NP)/NP x W% x QCP-FTCA |
| **Monthly Fuel Adjustment** | **MFA** | -$11,092.07 |

1. The following worked example will serve as a model for the calculation of the **Fuel Tax Credit Adjustment**:

|  |  |  |
| --- | --- | --- |
| **Item** | **Reference** | **Example** |
| Off Road Kms X 2 | Off Road Kms | 500 X2 = 1000 |
| Off Road Tax Credit | OFFRTC | $0.395 |
| On Road Tax Credit | ORTC | $0.136 |
| Fuel consumption | FC | Example only (0.7 litres/km) |
| **FTCA** = 1000 X ($0.395 - $0.136) X 0.7 = $181.30 |

**Item 3 – Not Used**

**Item 4 –** **Adjustment of Haulage Rates by reason of Variation in GCMs**

1. Current Gross Combination Mass (GCM) regulations are likely to vary during the Term.
2. In the case Higher Mass Limits are available for the designated routes then Contractor must participate in the Scheme. FCNSW may request to adjust rates according to the mechanism described below.
3. The GCM for each vehicle configuration at the Commencement Date is recorded in the table below.

|  |  |
| --- | --- |
| Vehicle Configuration | Current Concessional Mass Limits (CML) at Contract Commencement (with FUPS) |
| 6 Axle Combination | 44.0 tonnes |
| 7 Axle Combination, operating as a General Access Vehicle | 51.5 tonnes |
| 7 Axle Combination, operating as a Restricted Access Vehicle | 57.5 tonnes |
| 8 Axle Combination | 61.0 tonnes |
| 9 Axle Combination  | 65.0 tonnes |

 (c) Where a GCM is increased during the Term,

i. 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").

ii. ascertain the percentage increase in the GCM ("GCM Factor") by applying the formula:

* GCM Factor = GCM Increase / GCM X 100

For example if the GCM Increase is 0.5 tonnes for a 9 Axle vehicle, the GCM Factor is 0.5/65 which equals 0.769 percent.

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

* GCM RAF = 100% - GCM Factor

For example, if the GCM Factor is 0.769%, the GCM

 RAF is 100% - 0.769% which equals 99.231%.

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

* NHR = EHR X GCM RAF

For example if an existing haulage rate for a particular vehicle configuration is $10.00 per tonne, and the GCM RAF is 99.3%, the new haulage rate is $10.00 X 99.3% which equals $9.93 per tonne.

(d) Where adjustments are to be made to Haulage Rates arising out of any variations in GCMs, the adjustment shall be made before the application of adjustments arising from Schedule 5.

**Item 5 - Voluntary Higher Mass schemes**

1. 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.
2. If other Voluntary schemes are introduced or become available (i.e. Intelligent Access Program) that provide an increase in allowable GCMs on the designated routes then this schedule may be applied by FCNSW by comparing the total allowable increased GCM under the scheme versus the GCM as listed in the above table at contract commencement or as updated.
3. 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 6 –Quarterly Quantity Adjustment**

1. If the Actual Quarterly Quantity is less than the Minimum Annual Delivery Rate multiplied by the Base Quarterly Quantity in a Quarter then the last monthly payment in a Quarter will be adjusted up based on the following formula.

Quarterly Quantity Adjustment = [(Average Haulage Rate for the Quarter x Base Quarterly Quantity x Minimum Annual Delivery Rate) – (Average Haulage Rate for the Quarter x Actual Quarterly Quantity)] x 0.4

The following worked example will serve as a model for the calculation of the Quarterly Quantity Adjustment where the Actual Quarterly Quantity is less than of the Minimum Annual Delivery Rate multiplied by the Base Quarterly Quantity in a Quarter:

|  |  |
| --- | --- |
| Item | Value |
| Payment for Haulage Services ($) | $197,624 |
| Actual Quarterly Quantity (Tonne kilometres) | 985,642 |
| Average Haulage Rate for the Quarter ($/Tonne kilometre) | $0.2005 |
| Base Quarterly Quantity (Tonne Kilometres) | 1,152,000 |
| % of Target | 85.6% |
| Quarterly Quantity Adjustment ($) | $4,103 |

1. If the Actual Quarterly Quantity is greater than the Maximum Annual Delivery Rate multiplied by the Base Quarterly Quantity in a Quarter then the last monthly payment in a Quarter will be adjusted down based on the following formula.

Quarterly Quantity Adjustment = ((Average Haulage Rate for the Quarter x Base Quarterly Quantity x Maximum Annual Delivery Rate) – (Average Haulage Rate for the Quarter x Actual Quarterly Quantity)) x 0.4

The following worked example will serve as a model for the calculation of the Quarterly Quantity Adjustment where the Actual Quarterly Quantity is more than the Maximum Annual Delivery Rate multiplied by the Base Quarterly Quantity in a Quarter:

|  |  |
| --- | --- |
| Item | Value |
|  | $253,125 |
| Actual Quarterly Quantity (Tonne kilometres) | 1,350,000 |
| Average Haulage Rate for the Quarter ($/Tonne kilometre) | $0.1875 |
| Base Quarterly Quantity (Tonne kilometres) | 1,152,000 |
| % of Target | 117.2% |
| Quarterly Quantity Adjustment ($) | -$6,210 |

**Item 7- Annual Quantity Adjustment**

1. If the Actual Annual Quantity is between the Minimum Annual Delivery Rate and the Maximum Annual Delivery Rate each multiplied by the Base Annual Quantity, the last monthly payment in a Year will be adjusted up or down based on the following formula:

**Annual Quantity Adjustment = Minus the Sum of the Quarterly Quantity Adjustments in that Year**

1. If the Actual Annual Quantity is less than the Threshold Quantity in a Year then the last monthly payment in a Year will be adjusted up or down based on the following:

**Annual Quantity Adjustment = ((Average Haulage Rate x Base Annual Quantity x 0.2) x 0.4) – Sum of the Quarterly Quantity Adjustments in that Year**

1. If the Actual Annual Quantity is less than the Minimum Annual Delivery Rate multiplied by the Base Annual Quantity, but equal to or more than the Threshold Quantity in a Year then the last monthly payment in a Year will be adjusted up or down based on the following formula:

**Annual Quantity Adjustment = ({(Average Haulage Rate x Base Annual Quantity x Minimum Annual Delivery Rate) – (Average Haulage Rate x Actual Annual Quantity)} x 0.4) – Sum of the Quarterly Quantity Adjustments in that Year**

1. If the Actual Annual Quantity is greater than the Maximum Annual Delivery Rate multiplied by the Base Annual Quantity in a Year then the last monthly payment in a Year will be adjusted up or down based on the following formula:

**Annual Quantity Adjustment = ({(Average Haulage Rate x Base Annual Quantity x Maximum Annual Delivery Rate) – (Average Haulage Rate x Actual Annual Quantity)} x 0.4) – Sum of the Quarterly Quantity Adjustment in that Year**

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



**Item 8 – Liquidated Damages Formula**

**LD = (TQ - AAQ) X 0.5 X 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;

**“AHR”** means the weighted average Haulage Rate paid during the relevant year (determined by dividing the gross revenue by the Actual Annual Quantity)

The following worked example will serve as a model for the calculation of the Liquidated Damages Formula:

|  |  |  |
| --- | --- | --- |
| **Item** | **Reference** | **Value** |
| Base Annual Quantity | BAQ | 3,840,000 |
| Threshold Quantity (tkm) | TQ | 2,688,000 |
| Actual Yearly Quantity (tkm) | AHQ | 2,000,000 |
| Average Haulage Rate($/tkm) | AHR | 0.1558 |
| Liquidated Damages | LD | LD = (TQ - AHQ) X 0.5 X AHR |
| Liquidated Damages | LD | **$53,595.20** |

**Item 9 -** **Haulage Rates for Cross Loading**

**1.** In this schedule:

**“Base Location"** means the location, to be either agreed by the Parties or determined by FCNSW (as the case may be) after consultation between the Parties, at which the particular haulage vehicle is generally parked whilst not undertaking Haulage Operations;

**"Cross Load"** means the part of a Cross Load Trip when the haulage vehicle is carrying its second load of Log Products;

**"Cross Load Trip"** means a journey by a haulage vehicle conducted under this Agreement or another agreement between the Parties commencing at a Loading Point and then directly and consecutively as follows:

(i) carrying a load of Log Products to a Product Destination; then

(ii) travelling unloaded to a second Loading Point; then

(iii) carrying a load of Log Products to a Product Destination; and then

(iv) travelling unloaded to a Loading Point, or the Base Location, whichever first occurs, at which point the Cross Load Trip ends;

**"Cross Load Trip Kilometres"** means the total kilometres involved in a Cross Load Trip;

**"Forward Load"** means the part of a Cross Load Trip when the haulage vehicle is carrying its first load of Log Products;

**"Loaded Kilometres"** means kilometres travelled by a vehicle in a Cross Load Trip whilst carrying a load of Log Products;

**"Loading Point"** means a location at which a load is picked up;

**'Payload"** means the average payload for that Vehicle for the last full Month prior to the Month in which the Haulage Rate for the Cross Load is being calculated.

**"Scheduled Rate"** means a Haulage Rate which would apply under this Schedule but for the application of this Part 3 of this Schedule;

**"Unloaded Kilometres"** means kilometres travelled by a vehicle in a Cross Load Trip whilst not carrying a load of Log Products;

**2.** Unless otherwise provided the Haulage Rate for a Forward Load and a Cross Load is the Scheduled Rate.

**3.** If the Loaded Kilometres expressed as a percentage of the Cross Load Trip Kilometres is more than 60%, the Haulage Rate for a Cross Load is calculated by the formula:

CR = SR - (0.65 x ((LK - UK) x AKR)/P);

Where:

"CR" means Haulage Rate to be applied for the Cross Load;

"SR" means the Scheduled Rate for the Cross Load;

"LK" means Loaded Kilometres;

"UK" means Unloaded Kilometres;

"P" means the applicable Payload for the Vehicle used. The applicable payload will be calculated as being the average payload of that Vehicle for the full month preceding the Month to which this calculation applies;

"AKR" means the Average Kilometre Rate, calculated by the formula:

AKR = ((FSR + CSR) x P)/ (LK x 2);

Where:

* "FSR" means the Forward Load Scheduled Rate; and
* "CSR" means the Cross Load Scheduled Rate.

**For Example, if:**

* The Loaded Kilometres involved in the Cross Load Trip is 150 km; and
* The Unloaded Kilometres involved in the Cross Load Trip is 50 km; and
* The one way distance for the Forward Load is 60 km; and
* The one way distance for the Cross Load is 90 kilometres; and
* The Vehicle to which this rate applies had an average payload of 42 tonnes in the Month preceding this calculation; and
* The Scheduled Rate for the Forward Load is $6.00/tonne; and
* The Scheduled Rate for the Cross Load is $8.00/tonne;

Then the Average Kilometre Rate is:

AKR = (($6.00 + $8.00) x 42) / (150 x 2) = $1.96 per km

and the Cross Load Rate is:

CR = $8.00 - (0.65 x ((150km -50km) x $1.96)/42) = $4.97/tonne

Schedule 6– Rate Review Mechanism

**Part 1-Table of Indicators and Indicator Weightings at Commencement Date**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 |
| **Cost Item** | **Indicator** | **Data Source** | **Base Indicator Rate** | **Base Indicator Date** | **Base Indicator Weighting** |
| **Item 1: Wages** | 90% of the movement in the ABS Labour Price Index Cat No 6345 Table 2b (Series IDA2599619A Quarterly Index ; Total hourly rates of pay excluding bonuses ; New South Wales ; Private and Public ; All Industries) | [www.abs.gov.au](http://www.abs.gov.au/) | 133.6 | Mar-20 | 34.0% |
| **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. ORTC at 1 Jul-20 =$0.16011/litre and GST = 10% | [www.aip.com.au](http://www.aip.com.au/) |  | 1 April 2019 to 31 March 2020 | 24.0% |
| Base Price | $1.34084 |
| Minus GST | $0.12194 |
| Minus ORTC | $0.16011 |
| Total (Net Price) | $1.05883 |
| **Item 3: Repairs and Maintenance** | 90% of the movement in the ABS Consumer Price Index Cat No 6401 Table 7: Motor Vehicle Parts and Accessories (Series ID A2328726R ; Index Numbers ; All groups ; Australia) | [www.abs.gov.au](http://www.abs.gov.au/) | 113.6 | Mar-20 | 8.5% |
| **Item 4: Administration and Overheads** | 90% 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 | 116.6 | Mar-20 | 12.5% |
| **Item 5: Capital related items** | No Adjustment |  |  |  | 21.0% |
| Total |   |   |   |   | 100.00% |

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 in the case of the first Haulage Rate review where it means the figures set out in Column 4 of Part 1 to this Schedule 6;

**“Base Indicator Weighting”** means the weighting given to an Indicator for the purpose of calculating the weighted movement across all Indicators during a review more particularly being the weighting set out in column 6 of Part 1 as varied from review to review in accordance with this Schedule 6;

**“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 the Indicator Rate current for the purpose of the review more particularly being:

* 1. In relation to Indicators that are based on CPI, the relevant CPI figures last published prior to the review;
	2. In relation to Fuel:- the daily weighted average Terminal Gate Price, in dollars per litre, of Diesel in Sydney during 12 months ending 31 March before the review 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;
	3. In relation to Indicators that are based on a Labour index, the relevant Labour index figures last published prior to the review;
	4. In relation to Indicators that are based on a Motor vehicle parts and accessories index, the relevant Motor vehicle parts and accessories index figures last published prior to the review;

**“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;

**“Review Period”** means the twelve (12) month period ending the 31 March occurring immediately before the carrying out of the review except in relation to the first review where it means the period from the Base Indicator date listed in Column 5 of part 1 Schedule 6 to the 31 March occurring immediately before the carrying out of the review.

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

**1.** The information set out in **columns 4 and 6 of Part 1** are the Base Indicator Rates and Base Indicator Weightings to be applied in the first review of the Base Haulage Rates.

**2.** Ascertain the level of each Indicator in **column 4 of Part 1**, 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 6 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 | 90% |
| Adjusted Movement | 2.26% |
| Base Indicator Weighting | 32.00% |
| Weighted Movement in the Indicator | 0.72% |

**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 |

1. For the purposes of the next Application of the Rate Review Mechanism under **clause 14.8** ascertain reweighted **column 6 of Part 1** Base Indicator Weightings for each Indicator by multiplying the then current **column 6 of Part 1** Base 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 Base Indicator Weightings which sum to 100 percent. For example:

|  |  |
| --- | --- |
| **Item** | **Value** |
| Name of Cost Item | Wages |
| Weighted Movement in the Indicator plus 1 | 100.72% |
| Base Indicator Weighting | 32.00% |
| Weighted Movement in All Indicators plus 1 | 103.00% |
| Reweighted Base Indicator Weighting | 32.13% |

SCHEDULE 7 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 Contractor’s obligations under the Chain of Responsibility Laws, any other Applicable Laws or this Agreement. Where the Contractor and FCNSW have a joint responsibility, the parties will agree on the extent of each party’s responsibilities.

1. **Mass Requirements**
	1. Carrying Capacity
		1. The Contractor will;

 Provide FCNSW with the Gross Combination Mass Limit of each Vehicle; and

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. Product Weight

The Contractor must;

* + - * 1. Ensure that each Vehicle when loaded with Log Products does not exceed the Gross Combination Mass Limit of the vehicle;
				2. confirm for each load of Log Products delivered to a Product Destination that the Vehicle and the load does not exceed the Gross Combination Mass Limit.

1.3 Positioning of the Log Products on the vehicle

 The Contractor must:

1. ensure Log Products are positioned on the Vehicle in accordance with the Chain of Responsibility Laws, and
2. Confirm that each load of Log Products has been positioned on the Vehicle in accordance with the Driver’s training and in compliance with requirements under the Chain of Responsibility Laws.
3. **Vehicle Dimension**

The Contractor must ensure that each load complies with the vehicle dimension requirements under Chain of Responsibility Laws. The Contractor must not accept the load of Log Products if the load exceeds the Vehicle Dimensions.

1. **Load Restraint**

The Contractor will:

1. Ensure each load of Log Products being hauled to a Product Destination is restrained in accordance with the requirements of the Chain of Responsibility Laws; and
2. Confirm for each such load that the load has been restrained in accordance with the Chain of Responsibility Laws.
3. **Fatigue Management**

The Contractor and the Contractor’s Drivers 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 that it has complied with such obligations.

Schedule 8 – Performance Assessment

**Item 1 - Contractors Performance Assessment**

|  |  |  |
| --- | --- | --- |
| **Element** | **Aspect** | **Weight** |
| **Safety** | RIFR ( # of incidents \* 1,000,000 / person hrs. worked YTD) | 2.5% |
| Incident Severity | 2.5% |
| Incident Reporting/Corrective Actions | 7.5% |
| Safety Observations/Near Miss | 7.5% |
| Third Party/Independent SMS Audit | 10% |
| **Operational** | Reliability (Deliveries) | 15% |
| Quality (Overloading) | 15% |
| **Compliance** | Operational Compliance | 10% |
| Incident Severity | 10% |
| **Self-Management** | FCNSW Management | 10% |
| Administration | 10% |
| **Innovation** | Innovation (improved product, service or process) | 5% |
| **Total** |  | 100% |

Schedule 9 - Monthly Report

|  |
| --- |
| **Details** |
| Contractor |  |
| Person Completing Form |  |
| Financial Year  |  |
| Month |  |

|  |
| --- |
| **Safety Statistics** |
| Total hours worked for the month |  |
| Total No. of Lost Time Incidents  |  |
| Total No. of Medical Treatment Incidents  |  |
| Total No. of Reportable Incidents |  |

|  |
| --- |
| **Chain of Responsibility Report** (where a breach is reported, a corresponding corrective action must bedetailed below) |
| Number of speed breaches |  |
| Number of mass breaches |  |
| Number of dimension breaches |  |
| Number of fatigue breaches |  |
| Number of Maintenance breaches |  |

|  |
| --- |
| **Corrective Actions (Chain of Responsibility, Safety, Environmental, Other Compliance)** |
| Issue | Action Required | Completed (Yes/No) |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

Schedule 10 – Delivery Data

Delivery Data includes:

Haulage Operations

* Engine management system data;
* 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;
* Any other relevant information requested by FCNSW; and
* During the period specified by FCNSW in its request (“delivery information”).

Loading Operations

* GPS data;
* Equipment utilisation measured as a percentage of the time that Equipment engaged in Loading Operations is operating under this Agreement compared to the number of hours the Equipment was legally able to work.
* The quantities of Log Products loaded by the Contractor under this Agreement;
* The Harvesting Units and Log Stacks from which the Log Products were loaded;
* The Product Destinations of Log Products loaded;
* Any other relevant information requested by FCNSW; and
* During the period specified by FCNSW in its request (“loading information”).