



**NSW RURAL FIRE SERVICE**



## **HEAVY PLANT SERVICES (FIRE WORK ONLY)**

## **CONDITIONS OF AGREEMENT**

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# Heavy Plant Services (Fire Work Only) Conditions of Agreement

## Background

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- A. NSW RFS is the New South Wales' Government's lead agency for the management of bush fire hazards and for combating bush fires when they occur.
- B. From time to time NSW RFS engages contractors with appropriate plant, equipment, systems and personnel to assist with its bush fire based operations by providing the Services.
- C. The Contractor registered its interest to supply the Services to NSW RFS by submitting a proposal with details of certain Plant and associated rates.
- D. NSW RFS agrees for the Contractor to be included on NSW RFS's Heavy Plant Register to supply the Services to NSW RFS from time to time in accordance with the terms of this Agreement using Plant.
- E. No guarantee is made by NSW RFS and no obligation is implied that NSW RFS will call upon the Contractor for the supply of the Services for any particular volume or at all.

## 1. Definitions

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Unless the context indicates otherwise, the following definitions are for terms used in this Agreement:

**Agreement** means this document (including Schedule 1 (Operational Requirements)), Plant, Plant Price, Excess Travel Rate, NSW RFS Policies and Procedures and any Plant Taskings.

**Agreement Period** means Initial Term, any Extended Term and any applicable Holding Over Period, unless ended earlier in accordance with clause 17.

**Approval** means any permit, licence, consent or authorisation issued by a government agency. It includes any permit, licence, consent or authorisation that is necessary for the Contractor to supply the Services under this Agreement.

**Approved Sub-Contractors** means the Contractor's sub-contractors approved by NSW RFS under clause 10.3.

**Bulk Fuel Tankers** means vehicles designed for the transport and transfer of bulk fuel.

**Bulk Water Carriers** means vehicles designed to carry water of capacities in excess of 4,000 litres.

**Business Day** means a day which is not Saturday, Sunday or a statutory public holiday in New South Wales.

**Confidential Information** means information of a Party of which the other Party becomes aware in connection with this Agreement that is by its nature confidential, is designated by that Party as confidential or the other Party knows or ought to know is confidential. It does not include information which:

- (a) is lawfully in the public domain prior to its disclosure to a Party by another person;
- (b) enters the public domain otherwise than as a result of an unauthorised disclosure;

- (c) is or becomes available to the receiving Party from a third person lawfully in possession of it who has the lawful power to disclose the information to the receiving party on a non-confidential basis; or
- (d) was known by the receiving Party before disclosure to it.

**Consequential Loss** means any loss recoverable at law (other than loss arising in the usual course of supplying Services) which is consequential upon other loss, a loss of opportunity or goodwill, a loss of profits, a loss of anticipated savings or business, loss of value of any equipment and associated costs or expenses.

**Contractor** means the legal entity approved by NSW RFS to supply Services and whose details are recorded in the Heavy Plant Register.

**Contractor Representative** means the person specified in the Heavy Plant Register or any replacement person notified in writing by the Contractor to NSW RFS from time to time.

**Excess Travel Rate** means per kilometre rate ex GST approved by NSW RFS and included in its Heavy Plant Register that will apply to each kilometre of travel over 100 kilometres required to transport the Contractor's Plant and Personnel between the Contractor's address (as set out in the Heavy Plant Register) and the Service Site.

**Extended Term** has the meaning given to it in clause 2.2.

**Field Briefing** is a Service Site specific induction briefing provided by the authorised NSW RFS representative at the Service Site that may include:

- (a) an overview of the current and predicted conditions at the Service Site (e.g. fire and weather conditions, other plant and equipment in operation);
- (b) task assignment "objectives to be achieved," minimum standards for the work and time frames;
- (c) tactics (including Service Site specific safety and environment risks);
- (d) control, command and communications arrangements (i.e. confirming who the Plant Operator reports to, the radio channels and call signs to be used);
- (e) administrative and logistical requirements (e.g. timesheets, shift duration, crew changeover and plant transport arrangements, welfare and refuelling);
- (f) mutual support arrangements (i.e. supporting fire units); and
- (g) confirmation of emergency procedures, location of safety refuges and escape routes.

**Fire Work** means the supply of Services as described in clause 3.1 during a bush fire or other emergency incident. This category of Service is typically urgent and unplanned in nature, where requests may occur at any time with short notice and the requirement is for Services to be supplied without delay.

**Heavy Plant Manager** means the officer authorised by NSW RFS to be responsible for managing all aspects of the relevant Plant Tasking. The Heavy Plant Manager will be as specified in a Plant Tasking or any replacement person NSW RFS advises the Contractor of for the relevant Plant Tasking.

**Heavy Plant Register** means NSW RFS's complete list of approved heavy plant services contractors and their approved plant and associated pricing.

**Holding Over Period** is the period described in clause 2.3.

**Initial Term** has the meaning given to it in clause 2.1.

**Insolvency Event** means any of the following in relation to the Contractor:

- (a) the Contractor becomes unable to pay its debts as and when they fall due;
- (b) the Contractor is taken to have failed to comply with a statutory demand;

- (c) an application for winding up is made regarding the Contractor and not stayed, withdrawn or dismissed within 14 days;
- (d) a winding up order is made against the Contractor;
- (e) a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed to the Contractor;
- (f) a mortgagee enters into the possession of any property of the Contractor;
- (g) the Contractor is subject to any arrangement, assignment, moratorium or composition, protection from creditors under any statute or dissolved, other than to carry out a reconstruction while solvent, subject to any approvals required under this Agreement;
- (h) notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- (i) any actions of a substantially similar effect are taken in any jurisdiction.

**Law** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate legislation.

**Liability** means claims, debts, obligations, losses, liabilities, costs, damages and expenses of any kind and however arising, including penalties, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

**Parties** means NSW RFS and the Contractor.

**Personnel** of a Party includes its employees, agents, officers and sub-contractors. In the case of NSW RFS, the term also includes its volunteer members and, from time to time, duly authorised personnel of other government agencies. A reference to the Contractor's Personnel does not include NSW RFS. A reference to NSW RFS's Personnel does not include the Contractor.

**Plant or Heavy Plant** means the Contractor's earth-moving machinery, timber harvesting machinery, agricultural tractors, vehicles used to transport and support plant, bulk water carriers, bulk fuel tankers or farm machinery (as applicable) as approved by NSW RFS and included in the Heavy Plant Register.

**Plant Price** means the Contractor's hourly rate ex GST approved by NSW RFS and included in its Heavy Plant Register for supply of Services by the Contractor using corresponding Plant and Contractor Personnel.

**Plant Operator** means the operator or driver of the Plant.

**Plant Support Vehicles** means vehicles (typically four wheel drive utilities or light trucks) that are used by the Contractor in support of the operation of its Plant and for transport of its Personnel.

**Plant Tasking** means a duly authorised purchase order for Services placed in accordance with clause 4.1 of this Agreement which sets out the details of Tasks to be performed by the Contractor and incorporates the terms of this Agreement. The Plant Tasking will be in writing, in a form determined by NSW RFS and may be referred to as a "Plant Tasking form".

**Plant Transport Vehicle** means the load-carrying vehicle used by the Contractor to transport the Plant. It includes floats or low loaders, consisting of a prime mover and semi-trailer (and dolly) or a rigid axle truck and/or trailer combination.

**NSW RFS** means the New South Wales Rural Fire Service.

**NSW RFS Agreement Manager** means an officer of NSW RFS with the delegated authority to act on behalf of NSW RFS in relation to the Agreement.

**NSW RFS Policies and Procedures** means NSW RFS's policies, codes, guidelines, standards and standard operating procedures applicable to the Services as amended and notified in writing to the Contractor from time to time.

**Schedule 1 (Operational Requirements)** means as at the Commencement Date, the Schedule 1 document set out in this Agreement, which may be updated by NSW RFS from time to time.

**Services** means the services to be supplied by the Contractor as described in this Agreement.

**Service Levels** means the minimum performance levels set out in this Agreement, including in the relevant Plant Tasking (if any), to be achieved by the Contractor in the supply of Services.

**Service Site** means the place where Services are to be performed as specified in the relevant Plant Tasking.

**Standards** means Australian Standards, where such exist and are applicable to the Services, and includes international standards in the event of the lack of an Australian Standard.

**Substantial Breach** means a substantial or repeated breach of a term of this Agreement by the Contractor and includes any breach of the following clauses, Contractor's performance of Services (clause 3.3), Contractor's Service warranties (clause 3.4), Punctual commencement and delivery of Services (clause 5.2), Pricing (clause 8), Information Management (clause 11), Compliance with Laws and Standards (clause 12.2), Minimum Insurance Requirements (clause 12.3), No Assignment or Novation (clause 19.3) or Conflicts of Interest (clause 19.4).

**Tasking Cost** means the price payable for the Contractor to provide Services under a Plant Tasking, calculated by reference to the applicable Plant Price and Tasking Hours according to clause 8.1 and Excess Travel Rate (if any).

**Tasking Hours** means the hours set out in the relevant Plant Tasking for the supply of Services during a Tasking Period.

**Tasking Period** means the period of days set out in the relevant Plant Tasking when the Services will be supplied.

**Tasking Query** means a query made by the Heavy Plant Manager to the Contractor to assess if the Contractor could provide the Services if a Plant Tasking was issued.

**Tasks** means the specific Services set out in the Plant Tasking.

**Vehicle Laws** means:

- (a) all Laws relating to vehicle standards, mass, load and restraint requirements for the carriage of goods, (including but not limited to the *Roads Act 1993* (NSW) and the *Heavy Vehicle National Law 2013* (NSW) (HVNL), and any other equivalent legislation in other States and Territories;
- (b) all driving hours, speed, traffic and fatigue management requirements as imposed under the relevant laws and regulations;
- (c) all Laws relating to observance of "Chain of Responsibility" requirements as that term is generally understood and used in the road transport industry, including in the HVNL; and
- (d) all Laws relating to the licensing and operation of vehicles.

## 2. Term

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### 2.1 Initial Term

This Agreement commences on the date NSW RFS gives notice to the Contractor that it accepts the Contractor's proposal to supply the Services (**Commencement Date**) and expires on 30 June 2023 (**Initial Term**), unless terminated sooner in accordance with this Agreement.

### 2.2 Extended Term

NSW RFS may extend the Agreement Period for two, 12 month periods (each an Extended Term) by giving the Contractor written notice before expiry of the Initial Term or the then current Extended Term (as the case may be).

### 2.3 Holding Over

If the Parties continue to perform the Agreement immediately after the expiry of the Agreement Period and the NSW RFS Agreement Manager has not provided notice to the Contractor that the Agreement is terminated, the Agreement will continue until either Party provides at least 30 days' written notice to the other party to terminate the Agreement.

## 3. Services

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### 3.1 Services to be supplied

The Contractor will supply the Services required under a Plant Tasking according to this Agreement, together with all other work and materials not specifically described in this Agreement but which are incidental to, or otherwise necessary for the Contractor to provide the Services. Specific requirements for the Services (including Standards) are set out in Schedule 1 (Operational Requirements).

### 3.2 Fire Work

- (a) Services provided according to this Agreement will be for Fire Work only.
- (b) From time to time NSW RFS requires contractors to perform planned works, including bush fire fuel mitigation work, fire trail work, or drainage and crossing work (Non-Fire Work). While NSW RFS will not engage the Contractor to provide any Non-Fire Work under this Agreement it may enquire with the Contractor in relation to that Non-Fire Work. To be clear, the terms of this Agreement will not apply to Non-Fire Work.

### 3.3 Contractor's performance of Services

- (a) The Contractor must meet the applicable Services Levels set out in this Agreement, including in any applicable Plant Tasking form.
- (b) The Service Levels include the following:
  - (i) the Contractor is able to be contacted outside normal business hours;
  - (ii) the requested Services to be supplied without delay;
  - (iii) Plant and Personnel meet the requirements of this Agreement;
  - (iv) Services to be provided in accordance with the requirements of this Agreement;
  - (v) Tasking Hours are recorded on the timesheets; and
  - (vi) invoices promptly submitted with supporting documents.



- (c) NSW RFS may implement processes to assess the performance of the Contractor against Service Levels. As reasonably required, and at no cost to NSW RFS, the Contractor must provide information and reports to NSW RFS regarding its performance against the Services Levels.
- (d) Where the Contractor fails to meet any Service Levels, NSW RFS may, without limiting any of its other rights and remedies under this Agreement, require the Contractor to take steps to improve its performance to meet the Service Levels and undertake more frequent performance reporting.

### **3.4 Contractor's Service warranties**

The Contractor warrants that:

- (a) at the time of supply, all Services will:
  - (i) comply with this Agreement and all applicable Laws and Standards;
  - (ii) be of acceptable quality;
  - (iii) be fit for the purpose for which the Services were intended;
  - (iv) be free from defects;
- (b) NSW RFS's use of the Services will not infringe upon or violate any person's contractual or other rights;
- (c) it has and will maintain all necessary Approvals in relation to the supply of the Services;
- (d) all Services will be rendered with promptness and diligence;
- (e) it will use adequate numbers of Personnel to supply the Services;
- (f) it will use its best efforts to perform the Services in the most cost-effective manner consistent with the required level of quality and performance;
- (g) it will comply with all relevant Laws and Standards;
- (h) it will comply with all reasonable directions of NSW RFS (including of its NSW RFS Agreement Manager, Heavy Plant Manager and/or other authorised NSW RFS representatives as the case may be); and
- (i) it will provide the Services in accordance with this Agreement, including any Plant Tasking, with the due care, skill and diligence which would reasonably and ordinarily be expected from a skilled, reasonable and experienced supplier in the same or similar circumstances, with reference to applicable Standards.

## **4. Method of engagement of contractors**

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### **4.1 Issue of Plant Tasking**

NSW RFS will issue Plant Taskings in accordance with the operational procedures determined by NSW RFS and notified in writing to the Contractor from time to time (currently as set out in Schedule 1 (Operational Requirements) and NSW RFS Policies and Procedures).

### **4.2 Plant Taskings are part of Agreement**

Each time NSW RFS issues a Plant Tasking to the Contractor, the Plant Tasking will form part of this Agreement and be governed by the terms and conditions of this Agreement.

#### **4.3 No additional terms**

The Contractor must not (and must not attempt to) include any additional terms and conditions in any Plant Tasking form, including in any correspondence or other document.

#### **4.4 Contractor must be contactable**

- (a) The Contractor must maintain a suitable, reliable communication system so that the Contractor will be able to receive a Tasking Query or be notified of a Plant Tasking being issued without delay.
- (b) The Contractor acknowledges that it may be contacted during and outside of business hours in relation to the Services. The Contractor will not charge any additional costs if it is contacted by NSW RFS outside business hours.
- (c) NSW RFS may take into account difficulties communicating with the Contractor when assessing performance of the Contractor but there is otherwise no penalty for the Contractor not being able to be contacted.

#### **4.5 No assurance of volumes and non-exclusive supply**

- (a) This Agreement does not imply the Contractor:
  - (i) will receive any specific volume of Plant Tasking;
  - (ii) is required to supply Services when requested (although it must promptly decline such a request); or
  - (iii) is the exclusive or preferred provider of Services to NSW RFS.
- (b) The Contractor acknowledges that NSW RFS may, from time to time, appoint other providers to supply services the same as or similar to those under this Agreement.

#### **4.6 Contractor not to self-deploy**

The Contractor acknowledges that self-deployment by contractors (i.e. supply of services without NSW RFS authorisation) is not endorsed by NSW RFS and NSW RFS is not liable for any payments, loss, acts or omissions of the Contractor. (The Contractor may also not be afforded any exemptions under the applicable Laws.)

### **5. Performance of Services under Plant Tasking**

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#### **5.1 Transport to Service Site**

On issue of the Plant Tasking by NSW RFS the Contractor must, at its cost, transport the Plant, Personnel and any necessary equipment to the Service Site so the Services can be provided as set out in the Plant Tasking form.

#### **5.2 Punctual commencement and delivery of Services**

- (a) The Contractor must provide the Services within the Tasking Period specified in any Plant Tasking without delay.
- (b) As soon as practical after becoming aware of any matter which is likely to affect the Contractor's ability to provide the Services within the Tasking Period (Service Delay), the Contractor must inform the relevant Heavy Plant Manager of:
  - (i) the circumstances which the Contractor considers will give rise to the Service Delay;
  - (ii) the extent of the Service Delay;
  - (iii) whether the Contractor will be requesting a reasonable extension of time; and
  - (iv) any remedial action and the revised estimated time of arrival.

- (c) If a Service Delay occurs in relation to any Plant Tasking, the Tasking Cost payable for that Plant Tasking may be adjusted by NSW RFS in consultation with the Contractor.

### **5.3 On arrival at the Service Site**

- (a) Upon arrival at the Service Site, the Contractor must report to the authorised NSW RFS representative for a Field Briefing and to obtain authorisation to commence the Services.
- (b) A risk assessment will be undertaken by the Parties which, where practical, will include an inspection of the Contractor's Plant.
- (c) If the Contractor's Plant and Plant Operator are assessed by both Parties as appropriate, the Contractor may, at the direction and supervision of the authorised NSW RFS representative, commence performing the Tasks.

### **5.4 Performance of Services under a Plant Tasking**

The Contractor is required to perform Services within the Tasking Period specified in a Plant Tasking and in accordance with this Agreement. This includes supply of Services in accordance with:

- (a) the requirements of this Agreement;
- (b) the Plant Tasking, including the Plant required and the Tasking Period as set out in the Plant Tasking;
- (c) the standards for Plant and Personnel as set out in Schedule 1 (Operational Requirements);
- (d) any specific safety and environmental protection requirements including as set out in Schedule 1 (Operational Requirements);
- (e) fatigue management, alcohol and drug policies of the Parties (with the policies of NSW RFS to take priority if there is conflict);
- (f) industry best practices and are undertaken in a cooperative manner;
- (g) any directions given by the Heavy Plant Manager and/or other authorised NSW RFS representatives for any Plant Tasking, as long as it is not inconsistent with the Contractor's obligations under this Agreement or any Laws;
- (h) NSW RFS Policies and Procedures; and
- (i) all applicable Laws and Standards relevant to the performance of the Services.

### **5.5 Work, health and safety during performance of Services**

- (a) The Contractor acknowledges that the safety and wellbeing of all persons who may be affected by the Services is of paramount importance.
- (b) The Contractor is required to exercise its own judgment and skills and to perform the Services in accordance with applicable work, health and safety Laws. The Contractor will have direct control and sole responsibility for the safe operation of the Plant and performance of the Services.
- (c) In providing the Services, the Contractor must:
  - (i) undertake its own identification and analysis of all work health and safety risks involved in the provision of the Services taking into account the operational circumstances;
  - (ii) ensure the health and safety of all people whom the Contractor's Services may affect;

- (iii) consult and cooperate with NSW RFS and relevant third parties in relation to any work health and safety risks;
  - (iv) take all necessary measures to assess and eliminate or control risks arising from hazards associated with the supply of the Services; and
  - (v) report to NSW RFS any hazards, incidents or near misses.
- (d) If the Contractor considers the performance of the Services may:
- (i) result in unsafe operation of the Plant;
  - (ii) compromise the safety of Personnel operating the Plant or in the vicinity of the Plant;
  - (iii) breach any applicable Laws or Standards;
  - (iv) result in operation of the Plant outside of its capability; or
  - (v) result in the Plant Operator or any other Contractor Personnel performing work outside fatigue or capability requirements,
- the Contractor must:
- (vi) not commence or cease (as the case may be) performing the Services;
  - (vii) immediately inform the Heavy Plant Manager and/or other authorised NSW RFS representatives and provide details of its concerns; and
  - (viii) not proceed with any further work until agreed between the Contractor and the Heavy Plant Manager that this should occur.

If it is determined by the Parties that any Tasks cannot be completed due to safety risks, the Contractor will not be required to complete those Tasks and the Parties will seek to agree a variation to the Plant Tasking in accordance with clause 5.10 or a new Plant Tasking will be issued.

## 5.6 Timesheets

- (a) The Contractor will be required to record the hours worked and Tasks performed during a Tasking Period in accordance with any directions provided by NSW RFS.
- (b) NSW RFS will issue the Contractor with a timesheet (which may be paper based or electronic) which must be used.
- (c) The Contractor is to ensure the timesheet is verified and checked for consistency with the Plant Tasking by the authorised NSW RFS representative prior to leaving the Service Site at the conclusion of the Service Period. Any inconsistency between the Plant Tasking and the timesheet must be resolved with the Heavy Plant Manager prior to the Contractor's Personnel leaving the Service Site.
- (d) The verified timesheet must be submitted in the manner specified by NSW RFS as supporting documents for the Contractor's invoice.

## 5.7 Plant Breakdown

- (a) The Contractor is responsible for all insurance, maintenance, repairs and security of its Plant and vehicles (including any Plant Support Vehicle and Plant Transport Vehicle) used to fulfil any Plant Tasking.
- (b) If the Plant used by the Contractor to fulfil any Plant Tasking is out-of-service for any extended period (greater than 30 minutes) due to breakdown, damage, servicing, refuelling or theft (Plant Breakdown), the Contractor must inform the Heavy Plant Manager or other authorised NSW RFS representative as soon as practical.
- (c) If a Plant Breakdown occurs during a Plant Tasking,

- (i) the Contractor must either:
  - (A) restore the Plant to operational condition; or
  - (B) replace that Plant with another Plant of at least equal capacity agreeable to the Heavy Plant Manager, and
- (ii) the Tasking Cost payable for that Plant Tasking may be adjusted by NSW RFS according to the length of time that the Contractor is unable to supply the Services due to the Plant Breakdown.

## 5.8 Inclement Weather

If Services cannot be provided for a Plant Tasking due to inclement weather, then by agreement with:

- (a) the Contractor, NSW RFS may retain the Plant at the Site for the Tasking Period; or
- (b) NSW RFS, the Contractor may request an end to the Tasking Period with the Plant removed from the Service Site. If this occurs, the Contractor will be paid the Tasking Cost as if it had been fully performed.

The Contractor will at all times bear the risk for the Plant, including any loss or damage to the Plant. NSW RFS will not be responsible for any additional costs incurred by the Contractor to remove Plant from the Service Site.

## 5.9 Rejection of Services and Terminating a Plant Tasking

NSW RFS may reject Services and terminate a Plant Tasking if the following occurs:

- (a) If, during the Contractor's performance of that Plant Tasking, the Heavy Plant Manager and/or other authorised NSW RFS representative forms the view, acting reasonably and in good faith, that the Contractor is performing the Services:
  - (i) in an unsafe, dangerous or reckless manner;
  - (ii) against NSW RFS's directions; or
  - (iii) not in compliance with this Agreement,
 (each Improper Performance),  
 then the Heavy Plant Manager or other authorised NSW RFS representative may:
  - (iv) direct the rejected Services be removed and replaced, or rectified (at the Contractor's risk and expense) within such reasonable time; or
  - (v) terminate that Plant Tasking, direct the Contractor to cease performing the Services, and request the Contractor to leave the Service Site immediately.
- (b) If, after the risk assessment of the Contractor's Plant carried out under clause 5.3, the Heavy Plant Manager or other authorised NSW RFS representative forms the view, acting reasonably and in good faith, that the Plant:
  - (i) is inappropriate or unsafe for the Contractor to supply Services for that Plant Tasking; or
  - (ii) is not the Plant as requested under that Plant Tasking,
 (each **Inappropriate Plant**),  
 then the Heavy Plant Manager or other authorised NSW RFS representative may:
  - (iii) direct the rejected Services be removed and replaced, or rectified (at the Contractor's risk and expense) within such reasonable time; or
  - (iv) terminate that Plant Tasking and request the Contractor to leave the Service Site immediately.

- (c) If Improper Performance occurs or an Inappropriate Plant is provided by the Contractor for a Plant Tasking, the Contractor may not be paid any Tasking Cost for that Plant Tasking.

#### **5.10 Variation of a Plant Tasking**

- (a) At any time during the Tasking Period, NSW RFS may change its requirements for a Plant Tasking by issuing a revised Plant Tasking to the Contractor. The revised Plant Tasking may specify that:
  - (i) additional Tasks are to be performed;
  - (ii) the Service Site will be changed;
  - (iii) a particular part of the Plant Tasking is no longer required to be performed by the Contractor; and/or
  - (iv) the Contractor is to halt performance of Tasks for a period.
- (b) The Tasking Cost will be varied in the revised Plant Tasking if there is an increase or decrease in Tasking Hours, a change to the Plant required that has a different rate or a change to travel that will attract the Excess Travel Rate.
- (c) The Contractor is only to perform work that it will charge for in accordance with a Plant Tasking or a Plant Tasking varied in accordance with this clause 5.10.

### **6. Provision of Facilities and access to Service Sites**

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#### **6.1 Provision of Facilities by NSW RFS**

- (a) The Contractor may request NSW RFS to provide a storage area at the Service Site for the Contractor's vehicles, Plant and equipment to be stored during a Tasking Period. Where this is required NSW RFS will use reasonable efforts to satisfy the Contractor's request.
- (b) The Contractor's vehicles, Plant and equipment will be stored in that area at the Contractor's risk. It is the Contractor's responsibility to assess the suitability of the area and maintain the area in a clean, tidy and safe condition.

#### **6.2 Access to Service Sites**

- (a) NSW RFS will allow the Contractor reasonable access to Service Sites for the purpose of the Contractor meeting its obligations under this Agreement.
- (b) NSW RFS may deny access to the Service Sites if the Contractor's Plant or Personnel (including Plant Operator) do not comply with the terms and conditions of this Agreement. In those circumstances, NSW RFS will not be liable for any loss attributable to the denial of access of the Contractor.
- (c) In accessing the Service Site, it is the Contractor's responsibility for the selection and survey of routes to, within and from the Service Site (and for any damage to road, drainage, bridge and overhead structures). This includes:
  - (i) assessing any damage to road, drainage, bridge and overhead structures leading to, within and from the Service Site;
  - (ii) confirming the suitability of the Service Site for the unloading of the Plant; and
  - (iii) determining whether there is adequate turning and parking area for the Plant, Plant Transport Vehicle (if such a vehicle is used) and obtaining any necessary Approvals required under Vehicle Laws for any vehicles used.
- (d) The Parties acknowledge that some Vehicle Laws (for example section 50Y of the *Road Transport (General) Regulation 2013* (NSW)) provide for exemptions to the

obligation for the Contractor to obtain certain Approvals in relation to emergencies, such as a fire. The Contractor is responsible for determining whether such exemptions apply under the relevant Vehicle Laws.

- (e) Any exemption under relevant Vehicle Laws from requirements to obtain specific permit notices, will not negate the Contractor's responsibilities to ensure the suitability of route(s), comply with mass management and load restraint regulatory requirements and to hold necessary Approvals for its vehicles, including a General Class 1 Oversize Notice where applicable for regulated heavy vehicles.

### **6.3 Provision of property to support Services**

If NSW RFS provides the Contractor with any property (for example, any electronic communication or location tracking device) to utilise in the course of performing the Services, the Contractor must comply with NSW RFS's directions in relation to that property. At the completion of the Service Period the Contractor must return that property to NSW RFS.

## **7. Tasking Period and Tasking Hours**

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### **7.1 Tasking Period**

- (a) The Tasking Period and Tasking Hours will be as stated in the Plant Tasking form.
- (b) The Tasking Period and Tasking Hours start from the time the Heavy Plant Manager authorises the Contractor to commence supply of Services. These hours include reasonable and appropriate time for transport of the Plant and Contractor Personnel to the Service Site.
- (c) The Tasking Period ends on the day specified in the Plant Tasking form.

### **7.2 Suspension of activity during Tasking Period**

- (a) The Contractor acknowledges that NSW RFS may at any time direct the Contractor to suspend the performance of all or any part of the Tasks in a Plant Tasking and may require the Contractor to:
  - (i) keeps its Personnel and equipment on standby; and
  - (ii) comply with any safety and operational requirements.
- (b) The Contractor must, on receipt of NSW RFS's direction, immediately, or as soon as practicable (having regard to any safety and operational requirements), suspend the performance of the Tasks. The Tasking Period will not be altered by the suspension of activity.
- (c) The Contractor must resume carrying out its Tasks when instructed by NSW RFS. Such instruction may be given by the Heavy Plant Manager or other authorised NSW RFS representative.
- (d) The Contractor will be entitled to be paid the Tasking Cost as initially calculated by NSW RFS unless the suspension was caused by an act or omission by the Contractor. The Contractor has no other remedies associated with the suspension.

## **8. Pricing**

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### **8.1 Tasking Cost**

- (a) The Contractor will supply the Services required under a Plant Tasking for Tasking Cost. The Tasking Cost will be calculated based on the:
  - (i) Plant Price multiplied by the Tasking Hours; and

- (ii) Excess Travel Rate multiplied by the number of kilometres in excess of 100 kilometres travelled to and from the Contractor's registered address to the Service Site.
- (b) The Plant Price and Excess Travel Rate are fixed for the Agreement Period subject to annual indexation in accordance with clause 8.2.
- (c) The Plant Price and Excess Travel Rates are intended as all-inclusive prices covering the costs of the Contractor for the provision of the Services. No additional amounts may be charged to NSW RFS for provision of the Services. To be clear, the Contractor is not to separately include in any invoice any amounts incurred by the Contractor for:
  - (i) statutory on-costs (including applicable Plant registration, taxes, levies, licenses);
  - (ii) wages for the Plant Operator and any other Personnel required by the Contractor to supply the Services (including travel time, leave loadings, penalty rates and supervision);
  - (iii) costs to provide the support vehicle including, where applicable, any Plant Transport Vehicle and Plant Support Vehicle used;
  - (iv) daily travel costs for the Contractor's Personnel to and from the Service Site;
  - (v) costs of meals or accommodation for the Contractor's Plant Operator and any other Personnel;
  - (vi) Plant maintenance and operating costs including costs for spare parts and consumables (such as tyres, filters, fuel and lubricants etc.);
  - (vii) costs for maintaining insurances related to provision of the Services including those specified in clause 12.3;
  - (viii) costs to transport the Plant to and from the Service Site whether the transport is performed by the Contractor or a third party engaged by the Contractor (other than when the Excess Travel Rate applies);
  - (ix) costs for attachments to the Plant such as ground engaging tools (for earthmoving machinery);
  - (x) where applicable, the costs for any Bulk Fuel Tankers necessary to operate the Plant;
  - (xi) costs associated with obtaining necessary Approvals; and
  - (xii) any other costs and overheads of the Contractor.
- (d) To be clear, the Contractor will not charge NSW RFS any other amounts in connection with the supply of Services under any Plant Tasking.

## 8.2 Indexation of prices

- (a) The Plant Price and Excess Travel Rate will be increased annually on 1 July of each year of the Agreement Period only if the percentage change in CPI between the March quarters is 1% or more. The increase to the Plant Price and Excess Travel Rate for a year will be calculated by reference to the lesser of 2.5% and the percentage change in CPI between the applicable March quarters.
- (b) The following formulas will be used to determine the percentage change and calculate the increase to the Plant Price and Excess Travel Rate if the percentage change in CPI is less than 2.5%:



(i) **Step 1: Calculate percentage change**

$$\text{Percentage change} = (iN - iO) / iN$$

The Plant Price and Excess Travel Rate (ex GST) will not be adjusted for that year if iO is greater than iN or the percentage change is less than 1%.

(ii) **Step 2: Apply appropriate percentage (if applicable)**

(A) If percentage change is more than 2.5%

$$NP = EP \times 1.025$$

(B) If percentage change is less than 2.5%

$$NP = (EP / iO) \times iN$$

(iii) **Where:**

**CPI** means the All Groups CPI (Sydney) index 6401.0 published by the Australian Bureau of Statistics.

**NP** is the new price for each of the Plant Price (ex GST) and Excess Travel Rate (ex GST)

**EP** is the then existing price for each of the Plant Price (ex GST) and Excess Travel Rate (ex GST).

**iN** is the CPI for the quarter ending in March in the year indexation is calculated (the **iN Year**)

**iO** is the CPI for the quarter ending in March in the year before the iN Year.

- (c) NSW RFS will determine if a variation is to occur, calculate the variation of the Plant Price and Excess Travel Rate (if any) and provide the Contractor with written notification before 1 July each year of the Agreement Period which specifies the change to price (if any) that will take effect from 1 July.
- (d) If NSW RFS gives notice of a variation, the new Plant Price and Excess Travel Rate will be used by NSW RFS in its tasking processes from 1 July. The Contractor must update its records so any invoices for services provided after 1 July each applicable year apply the appropriate Plant Price and Excess Travel Rate as notified by NSW RFS.

### 8.3 Travel, Meals and Accommodation for Contractor's Personnel

- (a) The Contractor will be responsible for effort and costs of arranging for its Personnel to travel to and from the Service Site.
- (b) Where meals and accommodation are required for the Contractor's Personnel in connection with supply of Services:
- (i) these will be provided by NSW RFS at no cost to the Contractor. The accommodation offered may be shared (or even tent accommodation with shared amenities provided); and
- (ii) if the Contractor declines the meals and/or accommodation offered by NSW RFS, the Contractor is responsible for arranging alternate meals and/or accommodation for its Personnel at the Contractor's own expense and will not be reimbursed by NSW RFS.

### 8.4 Goods and Services Tax

- (a) In this clause and Agreement:
- (i) "**Consideration**", "**Tax Invoice**" and "**Taxable Supply**" will have the same meaning as provided for in the GST Law.

- (ii) **"GST"** is a goods and services tax and has the same meaning as in GST Law.
- (iii) **"GST Law"** means any law imposing a GST (includes *A New Tax System (Goods and Services Tax) Act 1999*). If the Act does not exist, means any Act and regulation imposing or relating to a GST.
- (b) The Contractor must hold an Australian Business Number (**ABN**) and be registered for GST.
- (c) Every invoice issued by a Contractor must be in the form of, or accompanied by, a correctly rendered tax invoice. No amount is payable until a correctly rendered tax invoice is received. Payment from NSW RFS to the Contractor will include the GST payable.
- (d) If there is any abolition or reduction of any tax, duty, excise or statutory charge associated with GST, or any change in the GST, the Consideration payment for the supply of Services must be varied so that the Contractor's net dollar margin remains the same.

## 9. Payment

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### 9.1 Invoices and Time for Payment

- (a) All claims for payment will be in the form of a correctly rendered tax invoice that is:
  - (i) for Services properly supplied in accordance with the Plant Tasking;
  - (ii) for the amounts to be itemised and correctly calculated according to clause 8.1;
  - (iii) supported by documentation necessary to evidence delivery of Services, including the Plant Tasking form issued by NSW RFS, timesheets verified by NSW RFS and any other document as reasonably specified by NSW RFS;
  - (iv) made out to the name and address provided in the Plant Tasking form; and
  - (v) complies with any other directions for invoicing notified in writing by NSW RFS from time to time.
- (b) Any terms and conditions on invoices or timesheets will not have any force or effect upon this Agreement.
- (c) If NSW RFS disputes an invoice, it will give notice of that to the Contractor which will specify the amount that it believes is due for payment. It may request an amended tax invoice be issued for that amount and pay that amount following receipt of an amended and correctly rendered tax invoice. If the parties do not resolve the dispute in relation to the unpaid amounts within 20 Business Days from the date of the notice, the dispute will be determined in accordance with clause 15.
- (d) Subject to this clause 9, NSW RFS will make payment within 30 days from the end of the month after receipt of a correctly rendered invoice.
- (e) The Parties agree that the making of a payment is not intended to be an acknowledgment by NSW RFS that the Services have been supplied in accordance with this Agreement.
- (f) The Contractor will not be entitled to any credit charge, service fee or any other fee or charge for extending credit or allowing time for payment by NSW RFS of money becoming due for the supply of Services.

## 9.2 Set-Off/Money Recoverable by NSW RFS

- (a) NSW RFS may deduct from amounts which may be payable, or which may become payable to the Contractor, any amount due from the Contractor to NSW RFS in connection with the supply of the Services.
- (b) Without limiting the above clause, any damages, costs and expenses recoverable by NSW RFS from the Contractor as consequence of the Contractor's breach of this Agreement may be deducted from the money due to the Contractor. If that money is sufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to NSW RFS and may be:
  - (i) set off against any other money due to the Contractor by NSW RFS under this or any other Agreement between NSW RFS and the Contractor; or
  - (ii) recovered from the Contractor by NSW RFS in an appropriate court.

## 9.3 Suspension of Payments

Should the Contractor refuse or neglect to carry out lawful and reasonable instruction or the specified requirement of NSW RFS in regard to any matter connection with this Agreement, NSW RFS may suspend all payments to the Contractor until such instructions or requirements have been complied with.

## 10. Contractor's Personnel

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### 10.1 Personnel requirements

The Contractor must ensure its Personnel engaged in the provisions of Service:

- (a) comply with NSW RFS's Policies and Procedures (including those related to work, health and safety and any Service Site specific safety and environmental requirements);
- (b) are careful, appropriately skilled, qualified, competent, suitably trained, and experienced for the provision of the Services or similar services taking into account the operating environment;
- (c) where applicable, hold all necessary Approvals and ensure these are current;
- (d) hold current work health and safety induction qualifications for the work they will perform and industry requirements (e.g. forestry licence, civil construction green card);
- (e) carry photo identification (e.g. driver's licence) issued by a statutory authority when working on Service Sites;
- (f) are not under the influence of alcohol and/or illicit drugs, or suffering from illness, medication, stress, fatigue that will impair their ability to work safely in providing the Services;
- (g) wear protective clothing and equipment appropriate to the task that complies with SafeWork NSW requirements and applicable Standards and any other requirements set out in Schedule 1 (Operational Requirements) and applicable NSW RFS Policies and Procedures;
- (h) comply with any competency requirements as specified by NSW RFS in Schedule 1 (Operational Requirements) including Bush Fire Awareness Training;
- (i) hold a current Bush Fire Awareness training identification card;
- (j) comply with all reasonable directions by NSW RFS; and
- (k) observe and comply with the provisions of this Agreement and act in an ethical, professional and lawful manner.

## 10.2 NSW RFS concerns about the Contractor's Personnel

- (a) NSW RFS may object to and direct the Contractor to remove any of its Personnel who in its opinion are incompetent, unsuitable or who has been guilty of neglect, or other improper behaviour. NSW RFS may determine whether such Personnel may be used by the Contractor under this Agreement.
- (b) Hours worked in one day by the Contractor's Personnel engaged for work at Service Sites will be in accordance with applicable Standards. Where fatigue is a concern, NSW RFS will suspend Services until satisfied that the Contractor's Personnel has had a sufficient rest break or is suitably replaced by fresh Personnel.
- (c) Any replacement Personnel provided by the Contractor must be subject to prior approval by NSW RFS.

## 10.3 Approved Sub-Contractors

- (a) The Contractor must not sub-contract any part of its obligations under this Agreement without NSW RFS's written consent, which may be granted subject to conditions. NSW RFS will not be liable for any loss attributable to it declining consent to a sub-contracting arrangement.

*If NSW RFS has given written approval for the Contractor's use of an individual as a Plant Operator and that individual is a sub-contractor or employee of a sub-contractor this approval may be taken as written consent for sub-contracting of the plant operation aspect of the Services by that Plant Operator.*

- (b) NSW RFS may from time to time require the Contractor to comply with processes or procedures determined by NSW RFS before it provides its approval, as a condition of any approval, or continued approval of sub-contractors. These processes may require the sub-contractor to complete onboarding documentation.
- (c) The Contractor must ensure that:
  - (i) it enters into a written subcontract with the Approved Sub-Contractor on terms consistent with this Agreement;
  - (ii) it has in place appropriate controls to supervise and manage the performance of Services by each Approved Sub-Contractor and ensure compliance with all relevant obligations and Laws;
  - (iii) each Approved Sub-Contractor takes out and maintains insurance policies that the Contractor is required to obtain under this Agreement;
  - (iv) it has authority to direct an Approved Sub-Contractor to immediately cease performing the Services if the Contractor receives notice from NSW RFS withdrawing consent given under 10.3(e);
  - (v) it promptly attends to the payment of all its Approved Sub-Contractors and fully indemnify and hold harmless NSW RFS from any claims for payment by its Approved Sub-Contractors; and
  - (vi) it has the right to terminate, in whole or part, any sub-contract with any Approved Sub-Contractor should NSW RFS exercise its rights to terminate under this Agreement.
- (d) The Contractor will continue to be bound by and responsible for the performance of this Agreement, notwithstanding that part or all of its obligations may have been sub-contracted.
- (e) NSW RFS may, without incurring liability, withdraw its consent of an Approved Sub-Contractor if, in its reasonable opinion, the sub-contractor is not meeting the requirements of this Agreement. NSW RFS will notify the Contractor in writing that its

consent is withdrawn, and the Contractor will immediately terminate its arrangement with the sub-contractor.

- (f) The Contractor will:
  - (i) be liable for any acts or omissions of any sub-contractor as fully as if they were the acts or omissions of the Contractor; and
  - (ii) indemnify and release NSW RFS from any Liability resulting from the acts or omissions of any sub-contractor.

## **11. Information Management**

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### **11.1 Confidentiality obligations of the Parties**

- (a) Except to the extent necessary to comply with any statutory requirements or government policy relating to the public disclosure of Confidential Information, neither Party will make public, disclose or use any Confidential Information of the other Party except in accordance with this Agreement, unless the other Party provides its prior written consent.
- (b) Each Party may disclose Confidential Information to its officers, employees and sub-contractors where such disclosure is essential to carrying out their duties or in accordance with this Agreement. In doing so, each Party must ensure that the Confidential Information of the other Party is used solely in connection with or for the purposes of fulfilling its obligations under this Agreement.

### **11.2 Privacy**

- (a) The Contractor must comply, and must ensure its Personnel comply, with the Privacy and Personal Information Protection Act 1998 (NSW) (PIPP Act) in respect of any Personal Information (as defined in the PPIP Act) the Contractor (including its Personnel) receives in the course of performing its obligations under this Agreement, including under any Plant Tasking.
- (b) The Parties acknowledge that there are obligations imposed on NSW RFS by the PIPP Act in relation to Personal Information that is disclosed to, or acquired by, or in possession of the Contractor in accordance or in connection with this Agreement. The Contractor will comply with any request from NSW RFS in relation to personal information and will not do anything that would cause NSW RFS to be in breach of its obligations under the PIPP Act.

### **11.3 Publicity, marketing and reputation**

- (a) The Contractor must not publicly disclose, distribute or otherwise communicate any media release, promotional material or publicity about or relating to this Agreement (including any Tasks or Service Site(s)) without the consent of NSW RFS.
- (b) The Contractor must not use any marketing collateral or promotions in connection with this Agreement without the NSW RFS Agreement Manager's consent. To be clear, the Contractor must not make any reference to NSW RFS (including use of its logo and insignia) in relation to this Agreement without the approval of NSW RFS.
- (c) The Contractor must, and must ensure that its Personnel, take no action directly or indirectly which prejudices the good name and reputation of NSW RFS or brings NSW RFS into disrepute.

### **11.4 Government Information (Public Access)**

- (a) The Parties acknowledge that information relating to this Agreement may be disclosed by NSW RFS in accordance with the *Government Information (Public Access) Act 2009* (NSW).

- (b) Pursuant to section 121 of the *Government Information (Public Access) Act 2009* (NSW) the Contractor will grant NSW RFS immediate right of access to information contained in the Contractor's records if that information is within a category of information that NSW RFS must have immediate access to. The Contractor will provide copies of any information as requested by NSW RFS at the Contractor's own expense. NSW RFS may consider any failure by the Contractor to comply with any request pursuant to this clause to be a Substantial Breach of this Agreement.

### **11.5 Exchange of Information Between Government Agencies**

- (a) The Contractor authorises NSW RFS to make available or share with relevant NSW and interstate government departments or agencies information concerning the Contractor. This includes any information provided by the Contractor to NSW RFS and any information relating to the Contractor's performance under this Agreement or the Contractor's financial position.
- (b) The Contractor acknowledges that information about the Contractor from any source including substantial reports of unsatisfactory performance may be taken into account by these government agencies in considering whether or not to offer the Contractor future opportunities and other government work.
- (c) NSW RFS regards the provision of information about the Contractor to any government department or agency as privileged within section 30 of the *Defamation Act 2005* (NSW).
- (d) The Contractor releases and indemnifies NSW RFS and the State of NSW from any claim in respect of any matter arising out of the provision of information. Without limiting the above, the Contractor releases NSW RFS and the State of NSW from any claim it may have for any loss to the Contractor arising out of the provision of information relating to the use of such information by the recipient of the information.

## **12. Other obligations of the Contractor**

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### **12.1 Approvals**

The Contractor must obtain at its own cost all Approvals necessary to perform this Agreement.

### **12.2 Compliance with Laws and Standards**

The Contractor must, in carrying out this Agreement, comply with and ensure that its Personnel (including any Approved Sub-Contractor or agent) complies with all Laws, Standards, NSW RFS Policies and Procedures applicable to the provision of the Services.

### **12.3 Minimum Insurance Requirements**

- (a) The Contractor must hold and maintain, and must ensure all Approved Sub-Contractors are beneficiaries under or otherwise hold and maintain during the Agreement Period insurances appropriate for the Services including the following insurances:
  - (i) a broad form liability policy of insurance which includes public liability insurance for at least \$20 Million in respect to each claim;
  - (ii) workers' compensation insurance in accordance with the applicable legislation;
  - (iii) insurance for the Plant and, where applicable, the Plant Transport Vehicle and Plant Support Vehicle including any applicable comprehensive motor vehicle insurance;
  - (iv) any other insurances required as set out in Schedule 1 (Operational Requirements); and

- (v) such other insurances as a prudent person would maintain in the provision of the Services or in the circumstances of the Contractor.
- (b) All policies of insurance must be effected with an insurer rated "A-", or better by the Australian Mutual Best or equivalent rating organisation. All policies must include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons covered under the policy of insurance.
- (c) The Contractor must ensure that each policy is in effect for the Agreement Period of this Agreement or such other period as required by NSW RFS. The Contractor must annually, and when requested in writing by NSW RFS, arrange for its insurer to complete a "Certificate of Currency of Insurance Obtained" and provide a copy of it to NSW RFS according to its reasonable directions.
- (d) The Contractor will as soon as practicable inform NSW RFS in writing of the occurrence of an event that is in connection with this Agreement that may give rise to a claim under a policy of insurance effected as required by this Agreement. The Contractor will ensure that NSW RFS is kept fully informed of subsequent action and developments concerning the claim.
- (e) Where the Contractor is a local government authority, a letter stating that the Contractor complies with the insurance obligations under section 382 of the *Local Government Act 1993* (NSW) will be accepted by NSW RFS as evidence of compliance under this clause 12.3.
- (f) Similarly, where the Contractor is another government department or statutory authority that has a legislative requirement to hold the minimum insurances required by this Agreement, are self-insured or insured under the State Treasury Managed Fund (TMF) or equivalent, a letter from the Contractor stating as such will be accepted by NSW RFS as evidence of compliance under this clause 12.3.
- (g) Where the Contractor is insured under its parent company's insurance policy, the parent company's insurance policy must clearly indicate that it applies and extends sufficient coverage to the Contractor as required by clause 12.3.
- (h) The effecting of insurance does not limit the Liabilities of the Contractor under other provisions of this Agreement.

#### 12.4 Contractor acknowledgement

The Contractor acknowledges that NSW RFS's position is that the Contractor is not a 'person exercising a function conferred by Division [3]' for the purpose of section 28 of the *Rural Fires Act 1997* (NSW) or a 'protected person or body' under section 128 of that Act (as those terms are used in this Act).

#### 12.5 General Indemnity

- (a) The Contractor will be liable in respect of, and indemnifies and will keep indemnified NSW RFS against any claim, loss, damages, costs, charges or expense which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (collectively **Losses**) as a result of:
  - (i) an unlawful, negligent, fraudulent, reckless, deliberate, or wrongful act or omission of the Contractor in connection with this Agreement;
  - (ii) a breach of this Agreement by the Contractor or its Personnel; or
  - (iii) any personal injury, illness or death to any person or damage to any property resulting from any act or omission of the Contractor or its Personnel in connection with this Agreement.

- (b) The Contractor's liability in respect to the indemnity provided in the above clause will be proportionally reduced to the extent that any unlawful, negligent or deliberately wrongful act or omission of NSW RFS that caused or contributed to the Losses.
- (c) Despite this clause 12.5, indemnity clauses within any other agreement between NSW RFS and local government authorities and other government or statutory authority prevail.

## **12.6 Contractor's general warranties**

The Contractor warrants that:

- (a) it has the power to enter into, execute and perform this Agreement and has obtained all necessary consents to enable it to do so;
- (b) all information which it has, or which any of its Personnel or representatives have, provided to NSW RFS or any representative of NSW RFS is true and correct in every respect and is not misleading or deceptive;
- (c) it has disclosed in writing to NSW RFS prior to the Commencement Date any matters relating to the commercial, technical or financial capacity of the Contractor that might materially affect the Contractor's ability to perform any of its obligations under this Agreement;
- (d) it has complied and will continue to comply with:
  - (i) NSW RFS Statement of Business Ethics for Commercial Partners and Suppliers; and
  - (ii) NSW Government Supplier Code of Conduct; and
- (e) before entering into this Agreement, it has disclosed to NSW RFS all of its past, current and anticipated interests and that of its Personnel which may conflict with or restrict their respective performance of the Services fairly and independently.

## **12.7 Third Party Warranties**

Where the Contractor provides Services that have been procured from third parties, the Contractor agrees to assign to NSW RFS to the extent permitted by law, the benefits of any warranties given by the third parties.

The Parties agree that the assignment of any third party warranties is in addition to the warranties offered directly by the Contractor under this Agreement and doesn't relieve the Contractor from the obligation to comply with the Contractor's own warranties.

## **12.8 Mistakes in Information**

The Contractor must pay for any additional costs incurred by NSW RFS by errors or omissions in material or other information supplied by the Contractor, even though that material or information may have been approved by NSW RFS.

## **12.9 Notification of Change in Control or Transfer of Ownership**

During the Agreement Period, the Contractor must notify NSW RFS in writing of any change in control (as defined by Section 50AA of the *Corporations Act 2001* (Cth)) or other action to reconstruct or amalgamate itself.

## **12.10 Notification of Insolvency**

During the Agreement Period, the Contractor must immediately notify NSW RFS in writing of any Insolvency Event that occurs in respect of the Contractor and disclose the details of any action taken in relation to the Contractor as a result of that Insolvency Event in so far as it affects this Agreement (including any existing Plant Taskings).



## **13. Intellectual Property**

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### **13.1 Ownership**

Nothing in this Agreement will affect either Party's ownership of their respective intellectual property unless agreed in writing.

### **13.2 Licences**

- (a) The Contractor irrevocably grants, and will ensure that relevant third parties grant, to NSW RFS a non-exclusive, royalty free, transferable licence to use the intellectual property in this Agreement for as long as NSW RFS may require.
- (b) NSW RFS grants to the Contractor a non-exclusive, royalty-free, licence to use NSW RFS's intellectual property incorporated into or in relation to materials provided by NSW RFS to the Contractor, solely for the purpose of perform the Contractor's obligations under the Agreement, including under any Plant Tasking.

## **14. Agreement Management**

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### **14.1 NSW RFS Agreement Manager**

NSW RFS will from time to time appoint a person as its NSW RFS Agreement Manager.

### **14.2 Contractor's Representative**

For the purpose of ensuring an efficient relationship with NSW RFS, the Contractor must appoint a Contractor Representative. The Contractor Representative must:

- (a) act as a representative of the Contractor in all matters pertaining to this Agreement;
- (b) serve as the primary point of contact for the Contractor with respect to the overall administration of this Agreement;
- (c) have the authority to implement such actions (including issuing directives through the Contractor's organisation) as may be required for the Contractor to comply with this Agreement;
- (d) meet with NSW RFS (including its NSW RFS Agreement Manager) when required to provide information regarding the Contractor's performance under this Agreement; and
- (e) answer any queries of NSW RFS and work with NSW RFS to address any issues relating to matters deemed urgent by NSW RFS arising in connection with this Agreement.

The Contractor's Representative must be available during business hours and all other times on reasonable notice by NSW RFS to discuss any queries, concerns or issues arising in connection with this Agreement.

### **14.3 Continuous Improvement and Best Practice**

NSW RFS has internal processes for identifying opportunities for improvement in its practices. The Contractor may be requested to participate in these processes by providing feedback, comment and information as appropriate.

#### 14.4 Electronic information

- (a) If NSW RFS has or subsequently develops an electronic platform for cataloguing, ordering and/or otherwise managing its contractors' services and Heavy Plant Register, the Contractor will comply with any reasonable request of NSW RFS to provide relevant information and documentation regarding the Services directly into, or in a form and manner to enable NSW RFS to input that information into, that platform.
- (b) The Contractor is responsible for ensuring that its information and documentation contained in such an electronic platform, or otherwise provided to NSW RFS, is at all times during the Agreement Period up to date, true and correct.
- (c) To be clear the terms and conditions of use of any electronic platform used by NSW RFS are not part of this Agreement.

### 15. Conduct and Dispute Management

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#### 15.1 Co-operation

The Parties must do all they reasonably can to co-operate in matters relating to this Agreement and to avoid hindering the performance of the other Party. The rights and responsibilities of the Parties under this Agreement remain unchanged unless the Parties agree in writing to vary them.

#### 15.2 General

Every effort will be made to amicably resolve any conflicts or issues arising between the Parties to the satisfaction of the Parties, otherwise by expert determination.

#### 15.3 Amicable resolution

- (a) Either Party may give notice to the other Party of an issue, dispute or difference (the **Issue Notice**) about the meaning or effect of this Agreement, or about any matter arising under or out of this Agreement. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.
- (b) The Party submitting the Issue Notice must submit it to the other Party's representative, which in the case of:
  - (i) NSW RFS - is NSW RFS Agreement Manager; and
  - (ii) the Contractor - is the Contractor's Representative.
- (c) The Parties must follow the issue resolution process in this clause before either Party commences proceedings or takes similar action except to seek an urgent injunction or declaration.
- (d) If a Party gives an Issue Notice under this clause, each Party will nominate in writing a senior executive who will promptly confer to resolve the issue.
- (e) A Party is not entitled to refer an issue to expert determination until 21 days after the giving of the Issue Notice to the other Party. This may only be done by giving this notice in writing to the other Party specifying the issue to be decided (the **Referral Notice**).
- (f) If a Referral Notice hasn't been given to the other Party within 28 days, then the issue is barred from expert determination or any other action or proceedings (including court proceedings).

## 15.4 Expert determination

- (a) If a Referral Notice is given under the above clause 15.3(e), the expert is to be agreed between the Parties. If they are unable to agree within 28 days of the Referral Notice, the expert is to be nominated by the Chief Executive Officer of the Australian Disputes Centre.
- (b) The expert nominated must be a lawyer unless otherwise agreed. The expert must not be an employee of the Parties, a person who has been connected with this Agreement or a person who the Parties have been unable to agree upon.
- (c) When the person to be the expert has been agreed or nominated, NSW RFS on behalf of both Parties must engage the expert by letter of engagement with a copy furnished to the Contractor. This letter will set out the issue referred to the expert for determination, the expert's fees, the procedure for determination and any other matter which is relevant to the engagement.
- (d) The Parties must share equally the costs of the expert for the determination and bear their own expenses.
- (e) If the expert determines that one Party must pay the other an amount, then either Party may commence litigation, but only 56 days after receiving the determination.
- (f) Unless a Party has a right to commence litigation under the above clause, the Parties must treat each determination of the expert as final and binding, and give effect to it, and if the expert determines that one party owes the other money, that Party must pay the money within 28 days.

## 16. Suspension

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### 16.1 Suspension from Heavy Plant Register

Without limiting its other rights under this Agreement, NSW RFS may suspend the Contractor's status as an approved heavy plant services contractor on the Heavy Plant Register and restrict the Contractor from receiving Plant Taskings under this Agreement if it, in its reasonable opinion, NSW RFS considers the Contractor has:

- (a) not complied with its obligations under this Agreement or any other agreement with NSW RFS including for Non-Fire Work;
- (b) demonstrated unsatisfactory performance of Services; or
- (c) engaged in conduct which may warrant termination for cause.

### 16.2 Contractor to be notified and rectify errors

- (a) NSW RFS will provide a written notice if it exercises its right under clause 16.1 which will specify matters including:
  - (i) the reasons prompting the suspension;
  - (ii) the suspension period (if suspension is for a fixed period); and
  - (iii) any actions required by the Contractor to lift the suspension.
- (b) Upon receipt of the notice, the Contractor must use its best endeavours to promptly rectify the faults or omissions described in the notice.
- (c) NSW RFS will notify the Contractor once it is satisfied the faults or omissions described have been satisfactorily remedied.

## 17. Termination of the Agreement

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### 17.1 Termination for Cause

Without prejudice to its rights, NSW RFS may immediately terminate this Agreement, in whole or part by written notice to the Contractor:

- (a) where the Contractor makes any statement, fact, information, representation or provides information which is false, untrue or incorrect in a way which materially affects this Agreement;
- (b) where proceedings or investigation are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
- (c) where the Contractor commits a Substantial Breach of this Agreement that is not capable of remedy;
- (d) where the Contractor commits a Substantial Breach of this Agreement in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from NSW RFS requiring it to do so (**Notice of a Breach**), or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as NSW RFS may reasonably allow;
- (e) where the Contractor is issued with a Suspension Notice under clause 16.1 and fails to complete the required actions to lift the suspension;
- (f) where the Contractor assigns its rights and/or obligations, or novates this Agreement or subcontracts it except in accordance with this Agreement;
- (g) where an Insolvency Event occurs in relation to the Contractor but subject to the operation of the *Corporations Act 2001* (Cth); or
- (h) if in NSW RFS's view a conflict of interest exists for the Contractor which prevents the proper performance of this Agreement.

### 17.2 Effect of Termination for Cause

If NSW RFS terminates this Agreement for cause, NSW RFS may:

- (a) contract with any other person to complete the provision of the Services including but not limited to any Plant Tasking remaining to be filled;
- (b) deduct loss or damages arising from or in connection with the termination, including any loss or damages incurred by NSW RFS from any money due, or which may become due to the Contractor (including outstanding payment for any Plant Tasking placed); and
- (c) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Contractor to NSW RFS.

### 17.3 Termination for Convenience

Either Party may terminate this Agreement in whole or part for its convenience by giving 14 days' written notice with effect from the date stated in the notice and without the need to provide reasons.

### 17.4 Effect of Termination for Convenience

- (a) The termination of the Agreement under clause 17.3 will not affect any outstanding Plant Tasking under this Agreement unless the context requires it.
- (b) NSW RFS will reimburse the Contractor its unavoidable costs directly incurred as a result of termination, provided that any claim by the Contractor is supported by

written evidence of the costs claimed, will be in total satisfaction of the Liability of NSW RFS to the Contractor in respect of this Agreement (and its termination), NSW RFS will not in any circumstances be liable for any Consequential Loss or loss of profits suffered by the Contractor as a result of the termination of this Agreement by NSW RFS.

### 17.5 Return or destruction of Confidential Information on termination

On termination or expiry of this Agreement the Contractor must return, or at its direction securely destroy and certify such destruction, all Confidentiality Information of NSW RFS in the Contractor's possession or control.

### 17.6 Return of NSW RFS property on termination

On termination or expiry of this Agreement, the Contractor must return all property owned by NSW RFS that was provided to the Contractor to perform Services under this Agreement that is in the Contractor's possession or control.

## 18. Interpretation

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Unless a contrary intention appears, the following rules apply to interpreting this Agreement:

- (a) Headings are for convenience only and do not affect the interpretation of this Agreement.
- (b) A reference to:
  - (i) a **Law** includes a Law made or issued under it and amendments, consolidations, re-enactments or replacements of any of them;
  - (ii) software, document or agreement, or a provision of a document or agreement is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a **person** includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
  - (iv) any **thing** (including a right, obligation or concept) includes each part of it;
  - (v) a **clause** or schedule is a reference to a clause or schedule to this Agreement;
  - (vi) a **party** includes the party's executors, administrators, successors and permitted assigns;
  - (vii) any **government agency** includes the successors of it;
  - (viii) **dollars, A\$ or \$** is a reference to the currency of Australia;
  - (ix) **singular** includes the plural, the plural includes the singular; and
  - (x) one gender includes the other genders.
- (c) Where:
  - (i) the Contractor consists of more than one person or corporation, this Agreement binds each of them separately and any two or more of them jointly or severally;
  - (ii) an obligation, representation or warranty made by the Contractor in this Agreement will bind each person or corporation separately and jointly and each person or corporation will alone be responsible for the performance of every obligation, representation or warranty contained in this Agreement.
- (d) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

- (e) The words ‘include’, ‘including’, ‘for example’ or ‘such as’ when introducing an example, do not limit the meaning of the words to which the example relates to the example or to examples of a similar kind.
- (f) The Parties may undertake business by electronic exchange of information and the provisions of this Agreement will be interpreted to give effect to undertaking business in this manner.
- (g) The term ‘may’ when used in the context of any power, right, authority, discretion or remedy (express or implied) (**Power**) of NSW RFS means:
  - (i) NSW RFS can exercise or not exercise that Power in its absolute and unfettered discretion;
  - (ii) NSW RFS has no obligation to the Contractor or any other party in connection with the exercise or non-exercise of that Power, including in connection with its effect on the Contractor; and
  - (iii) no right, interest or expectation of any kind is created in the Contractor in respect of that Power or its exercise or otherwise.
- (h) Where a Power is conferred on NSW RFS under this Agreement, that Power is in addition to, and not in substitution of, any other Power conferred on NSW RFS at Law or under this Agreement.
- (i) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision.
- (j) In the event of any ambiguity, discrepancy or inconsistency in interpreting any term or terms of this Agreement, the order of priority in their interpretation will be (from highest to lowest):
  - (i) this conditions of agreement document (excluding Schedule 1 (Operational Requirements));
  - (ii) Schedule 1 (Operational Requirements);
  - (iii) NSW RFS Policies and Procedures;
  - (iv) Plant, Plant Price and Excess Travel Rate; and then
  - (v) each Plant Tasking placed under this Agreement.

## **19. General**

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### **19.1 Entire agreement**

This Agreement is the entire agreement and understanding between the Parties for the supply of Services. Any prior arrangements, agreements, representations or undertakings on its subject matter are superseded by this Agreement.

To be clear, the agreement titled “NSW Rural Fire Services Heavy Plant Agreement RFP2012-01” is superseded by this Agreement and no further orders will be placed by NSW RFS under that agreement.

### **19.2 Good faith**

The parties will act in good faith in connection with this Agreement, including to resolve any disputes.

### **19.3 No Assignment or Novation**

- (a) The Contractor must not assign or novate this Agreement without first obtaining the prior written consent of NSW RFS as applicable (consent may be withheld at NSW RFS's absolute discretion).
- (b) The Contractor acknowledges that NSW RFS may make financial and due diligence checks on the entity proposing to take over this Agreement (before determining whether or not to give consent to the assignment or novation).

### **19.4 Conflicts of Interest**

- (a) Where the Contractor is aware of the existence of a conflict of interest, or where it is likely to arise in the performance of its obligations under the Agreement, the Contractor must notify in writing and consult with NSW RFS immediately upon becoming aware of the existence, or possibility of a conflict of interest and comply with any direction given by NSW RFS in relation to those circumstances designed to manage that conflict of interest.
- (b) For the purposes of this clause, a conflict of interest includes engaging in any activity, or obtaining any interest, likely to conflict with the performance by the Contractor of, or to restrict the Contractor in performing its obligations under this Agreement. These conflicts may be actual, perceived, potential, pecuniary or non-pecuniary interests.
- (c) Where the Contractor or the Contractor's Personnel are also members (volunteer or staff) of NSW RFS, this potential conflict of interest must be declared.
- (d) The Contractor must comply with any processes or procedures of NSW RFS, notified by NSW RFS to the Contractor from time to time, in relation to identification and declaration of conflicts of interest.

### **19.5 Records and Access to Records**

- (a) The Contractor must keep proper accounts and records in accordance with the accounting principles generally applied in commercial practice and as otherwise required by Law.
- (b) During the Agreement Period, the Contractor must within a reasonable time of a request from NSW RFS, provide NSW RFS access to and copies of material relevant to the performance of the Contractor's obligations (including any financial information that NSW RFS requires).
- (c) The Contractor will permit NSW RFS's reasonable access to all records and to the Contractor's premises, on reasonable notice, for the purposes of NSW RFS performing an audit of the Contractor's performance under this Agreement. The costs of such an audit will be paid by NSW RFS. This clause applies for the Agreement Period and for a period of 12 months from the termination or expiry of this Agreement.

### **19.6 Inspection**

- (a) During the Agreement Period, NSW RFS may on reasonable notice inspect the Contractor's or its sub-contractors' premises, facilities, the Plant and any associated materials to verify the Contractor's compliance with the Agreement, including any Plant Tasking.
- (b) The Contractor must provide reasonable assistance, including providing access to premises, facilities, the Plant and any associated materials, to enable NSW RFS or its nominated Personnel to carry out the inspection.

## 19.7 Waiver

A waiver in respect of the breach of a term of this Agreement by the other Party will not be taken to be a waiver in respect of any other breach. The failure of either Party to enforce a term of this Agreement will not be interpreted as a waiver of that term.

## 19.8 Counterparts

Counterparts of this Agreement are taken together to constitute one and the same instrument. The Parties may execute this Agreement by handwritten signature or electronic processes that are consistent with the requirements of the *Electronic Transactions Act 2000* (NSW) (or equivalent Commonwealth legislation, if applicable).

## 19.9 Notices

- (a) All contractual notices must be in writing and given by one of the following methods (in order of preference):

Method	When the method is to be used	When the notice will be considered received
<b>Electronic platform nominated by NSW RFS</b>	If NSW RFS has nominated an electronic platform for cataloguing, ordering and/or otherwise managing its contractors' services or Heavy Plant Register and given direction that notices in relation to information in that platform may be given through its appropriate functions, and in accordance with directions of NSW RFS.	2 <sup>nd</sup> Business Day after it is uploaded
<b>Email</b>	For the giving of notices that are not covered by the electronic platform nominated by NSW RFS.	<i>Notices to NSW RFS:</i> 1 Business Day after it is sent unless the sender has received a rejection notice <i>Notices to Contractor:</i> On the Business Day it is sent unless the sender has received a rejection notice
<b>Post</b>	For the giving of notices that include material that cannot be scanned or are required by Law to be served by post.	7 <sup>th</sup> Business Day after the letter was posted
<b>Hand delivered</b>	For the giving of notices that include material that cannot be scanned or are required by Law to be served by hand.	<i>Notices to NSW RFS:</i> 1 Business Day after it is received <i>Notices to Contractor:</i> On the Business Day it is received

- (b) Notices sent by email, post or hand delivery must be sent to the other Party as set out below:

### NSW RFS

Electronic Platform: As notified by NSW RFS to the Contractor  
Email: heavy.plant@rfs.nsw.gov.au  
Post: Locked Bag 17, Granville NSW 2142  
Hand delivery: 4 Murray Rose Ave  
Sydney Olympic Park NSW 2127  
Attention: Coordinator – Heavy Plant Programme



**Contractor**

Electronic Platform: As notified by NSW RFS to the Contractor  
Email: As listed in the Heavy Plant Register  
Post: As listed in the Heavy Plant Register or its registered address or principal place of business  
Hand delivery: As listed in the Heavy Plant Register or its registered address or principal place of business

- (c) If delivery or receipt of a notice is not made on a Business Day, then it will be taken to be made on the next Business Day.
- (d) The provisions of this clause do not apply to the service of any proceedings or other documents in any legal action.

**19.10 Applicable Law**

This Agreement is governed by the laws of the State of New South Wales and the Parties submit to the exclusive jurisdiction of the courts of the State of New South Wales.

**19.11 No Agency/No Employment/No Partnership**

The Contractor agrees that they will not be taken to be nor will it represent that it is an employee, partner, officer and/or agent of NSW RFS.

**19.12 No fetter on NSW RFS's powers**

This Agreement does not restrict or otherwise affect NSW RFS's unfettered discretion to exercise its statutory powers.

**19.13 Severability**

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

**19.14 Variation to the Agreement**

Any change to the Agreement must be in writing and signed by authorised representatives of each party.

**19.15 Survival**

Clauses 1 (Definitions), 3.4 (Contractor's Service warranties), 9 (Payment), 10 (Information Management), 12.3 (Minimum Insurance Requirements), 12.4 (Contractor Acknowledgement), 12.5 (General Indemnity), 12.6 (Contractor's general warranties), 12.7 (Third Party warranties), 12.8 (Mistakes in information), 13 (Intellectual Property), 15 (Conduct and Dispute Management), 17 (Termination of Agreement), 18 (Interpretation), 19 (General, including this clause 19.15 (Survival)), and any other clause or provision of this Agreement referred to in the above clauses survive ending of this Agreement as well as any right or obligation, which, by its nature is intended to survive ending of this Agreement.

## Schedule 1 – Operational Requirements

### 1. Introduction

The purpose of this schedule is to specify operational requirements of NSW RFS including certain processes and minimum standards for the Contractor providing Services under this Agreement.

In general, the requirement for Services provided by the Contractor through its Plant and Personnel are that they are self-managed and capable of operating in isolation at remote sites where the conditions may vary, and where the work must comply with strict environmental requirements.

The operating environment and risk involved with the provision of these Services include:

- (a) a dynamic work environment in fire prevention and suppression;
- (b) conditions and boundaries of the Service Site that may change with minimal notice, due to the escalation of fire;
- (c) the tasking of work may require short notice / response times;
- (d) there may be reduced visibility; and
- (e) work may be performed in proximity to volunteer fire crews with limited experience in working around heavy plant.

### 2. Variation of requirements

- (a) At any time during the Agreement Period NSW RFS may change its requirements set out in this Schedule 1 (Operational Requirements) or NSW RFS Policies and Procedures by providing notice to the Contractor.
- (b) Where reasonably possible, NSW RFS will provide the Contractor with advance notice of any required upcoming change in relation to its requirements.
- (c) The Contractor will implement such change in the following timeframes:

Reason for change to requirements	Timeframe for Contractor to implement change
Change urgently required to comply with safety, security, personnel or environmental requirements of NSW RFS	Contractor must use best endeavours to implement the change as soon as possible and no later than any timeframes reasonably notified by NSW RFS.  Until the change has been implemented the Contractor must implement safeguards to minimise the risk of the identified issue.
Change required to comply with change to Laws or Standards	The timeframe required by the Law or Standard.
Change required to comply with NSW RFS policy that is not urgent or related to the rows above	The timeframe reasonably required by NSW RFS.

- (d) If the implementation of the change (other than a change to comply with a change of Laws) would result in a material increase in the Contractor's costs of providing the Services, the Contractor is to notify NSW RFS within 30 days of NSW RFS informing the Contractor of the required change and provide NSW RFS with a proposal for revising the Plant Price and/or Excess Travel Rate (**Proposal**). If after being provided with the Proposal NSW RFS wishes the Contractor to implement the change, it will notify the Contractor and update the Heavy Plant Register.

- (e) NSW RFS will not pay and reserves the right to dispute any invoice which is based on prices other than those duly authorised and set out in the Heavy Plant Register.

### 3. Tasking Process

#### 3.1 Initial communication

- (a) **NSW RFS initial Tasking Query:** When Services are required NSW RFS may contact the Contractor to determine whether the Contractor is willing and able to provide Services. The NSW RFS representative will provide the following information at time of contact:
  - (i) type and number of Plant required;
  - (ii) an indication of the Tasks to be performed;
  - (iii) an indication of the Service Site or Service Sites (if applicable);
  - (iv) an indication of the conditions at the Service Site i.e. nature of the activities and details of the fire (including specific hazards, terrain, vegetation type and other conditions) and period in which Services are required;
  - (v) the time the plant is required to be at the Service Site (i.e. staging area); and
  - (vi) any particular information or requirements concerning the supply of Services.
- (b) **Contractor to indicate capability:** The Contractor is to provide an indication of its availability and capability to provide the services including by:
  - (i) seeking to clarify the scope of the proposed tasking if it is unclear to the Contractor; and
  - (ii) advising of any limitations on its availability and capability (including the hours that will have already been worked by its proposed Personnel on the first day of the Tasking Period).

#### 3.2 Issue of Plant Tasking

Once NSW RFS has made a Tasking Query, NSW RFS will issue a Plant Tasking form which will specify all relevant details of the Plant Tasking including:

- (a) a description of the Services, including the Heavy Plant required;
- (b) the name and contact details of NSW RFS representatives (including the Heavy Plant Manager);
- (c) the Tasking Period;
- (d) Tasking Hours;
- (e) the Tasking Cost as calculated according to clause 8.1;
- (f) the Service Site(s);
- (g) any reference numbers (such as a purchase order number);
- (h) the method by which the Contractor's invoice is to be sent for payment; and
- (i) any particular requirements concerning the supply of the Services.

The process in which NSW RFS will communicate Plant Tasking forms to the Contractor may involve an electronic ordering system.

#### 3.3 Contractor acceptance of Plant Tasking

If the Contractor begins performance of the Services under the Plant Tasking it will be taken to have accepted the Plant Tasking. If the Contractor does not accept the Plant Tasking or requires a variation to the Plant Tasking as issued, they must promptly notify NSW RFS.

## 4. Standard for Contract Plant

### 4.1 General

Plant and vehicles engaged under this Agreement must:

- (a) be in good working order and maintained in accordance with the manufacturer's requirements;
- (b) comply with all relevant legislation, statutory requirements and standards;
- (c) have current certifications, licences, insurances and registrations;
- (d) be comprehensively insured against damage or loss of this equipment;
- (e) have an appropriate size first aid kit;
- (f) have a UHF CB radio (and a mobile phone);
- (g) carry sufficient quantities of drinking water and food/rations for all Personnel for the shift. If it is impractical to stow a cooler on the plant, then it is to be carried on a support vehicle;
- (h) Pre-start checklists, daily logs (or diaries), maintenance records, operating instructions, manuals, risk assessments and safe work method statements for the item of plant must be current, available and able to be produced upon request; and
- (i) Plant and vehicles with attachments or trailers are to be listed as a single item in the Heavy Plant Register (e.g. prime movers and semi-trailers listed as a combination).

### 4.2 Specific requirements

- (a) Plant insurance policies should include coverage for fire suppression activities;
- (b) A knapsack sprayer or 9 litre/kg fire extinguisher (water, foam or dry powder) must be carried;
- (c) A woollen fire blanket must be carried where there is potential for exposure for fire entrapment. The blanket must be maintained in a clean and dry condition and be readily accessible. Blankets must comply with fire service standard issue or at least be 100% wool, approximately 2.3 m x 1.8 m in size; and
- (d) Plant not fitted with suitable lights won't be permitted to work at night or in low light conditions.

### 4.3 Vehicles

- (a) All vehicles used in provision of the Services must be registered, in a roadworthy condition and fitted with a functioning amber warning beacon.
- (b) All heavy vehicles must be operated in accordance with Laws including Vehicle Laws. The "Exemptions in relations to emergencies" provisions within the *NSW Road Transport (General) Regulation 2013 (NSW)* and *Heavy Vehicle National Law 2013 (NSW)* may be used only where approved by an authorised officer.
- (c) Plant Support Vehicles should not be operated or parked in locations where there is the potential for exposure to radiant heat from the fire or fire overrun. Where these vehicles carry fuel tanks or drums for refuelling plant, they must be free of fuel leaks, carry an appropriate fire extinguisher and fuel spill containment equipment.
- (d) Bulk Water Carriers are used for supplying water to fire fighting vehicles, aircraft, portable dams and also for dust suppression around air bases, staging areas, base camps, along access roads and tracks.
- (e) For this reason, Bulk Water Carriers that are off-road capable and fitted with dust suppression spray equipment are desirable. These vehicles must carry 75mm and

65mm Kamlok to Storz adaptors to enable transfer of water to fire tankers (the size and number of adaptors to be carried is dependent upon the size and number of the outlets on the bulk water tanker).

- (f) Bulk Fuel Tankers are typically required during large scale incidents (or emergencies) for refuelling diesel powered fire fighting vehicles, generators and Plant at Service Sites. These vehicles must:
  - (i) be licensed and comply with the applicable dangerous goods Laws for the carriage of Class 3 inflammable liquids (this includes the vehicle driver);
  - (ii) have a means for accurately recording and verifying all fuel dispensed (in keeping with standard commercial practices);
  - (iii) carry appropriate fire extinguisher(s) and fuel spill containment equipment; and
  - (iv) carry appropriate load and vehicle documentation (including Safety Data Sheet, dangerous goods manifest, current test and inspection certificates for the vehicle).
- (g) Contractors operating Plant Transport Vehicles must:
  - (i) comply with the Vehicle Law requirements for Oversize/Over-mass Vehicles and Loads including carrying the appropriate Oversize/Over mass notice and pilot vehicles;
  - (ii) be responsible for the selection and survey of routes to and from the Service Sites (and for any damage to road, drainage, bridge and overhead structures). This includes confirming the suitability for the unloading of plant and that there is adequate turning and parking area for the transport vehicle;
  - (iii) ensure Plant is loaded in accordance with NSW Laws (and shall be responsible for any fines and/or infringement notices due to breaches of these Regulations);
  - (iv) ensure the driver is competent in the loading and operation of the vehicle; and
  - (v) where the vehicle is used to transport Plant other than the Contractor's, have additional insurance coverage for the loading, unloading, transporting the Plant and for damage to overhead structures.
- (h) Where Plant is required to be transported, the machine operator must be available to load and unload the plant from the Plant Transport Vehicle.
- (i) Plant and vehicles used for chemical spraying (herbicides or for disinfecting heavy plant) shall be designed and constructed for this, be free of leaks, licensed (where required) and comply with *Code of Practice for Safe Use and Storage of Chemicals (including pesticides and herbicides) in Agriculture*, WorkCover NSW (now SafeWork NSW) (2006) ([www.safework.nsw.gov.au/\\_data/assets/pdf\\_file/0004/52870/Safe-use-and-storage-of-chemicals-including-pesticides-and-herbicides-in-agriculture.pdf](http://www.safework.nsw.gov.au/_data/assets/pdf_file/0004/52870/Safe-use-and-storage-of-chemicals-including-pesticides-and-herbicides-in-agriculture.pdf))

#### 4.4 Earth-Moving Plant, Timber Harvesting Plant and Tractors

As a minimum standard, Plant must:

- (a) comply with the equipment requirements and operating conditions specified in the NSW Roads and Maritime Services "*Conditional Registration Guide*" [www.rta.nsw.gov.au](http://www.rta.nsw.gov.au) (whether or not it is conditionally registered), and the following requirements;
- (b) be free of obvious damage, including:
  - (i) cracks in structural components and attachments;
  - (ii) loose or missing bolts;

- (iii) significant corrosion (i.e. other than superficial or surface rust);
  - (iv) damage to the windscreen/cabin windows that impairs the operator's field of view; and
  - (v) damage/excess wear to crawler tracks and running gear; or to tyres (e.g. deep cuts, bulges, exposed cords, etc...). Tyres should be rated for the load & wheel rim size and correctly inflated;
- (c) have all attachments, hand rails, steps, covers and guarding securely fitted in place and be free of:
- (i) significant oil leaks from the engine, transmission and hydraulic components;
  - (ii) leaks from the hydraulic tanks, engine coolant and fuel systems; and
  - (iii) accumulated combustible material, soil, weed material/seeds;
- (d) be fitted with:
- (i) the appropriate level of protective structures (refer to relevant subclause 4.5 of this Schedule);
  - (ii) seat belts and other occupant restraint devices;
  - (iii) rear view mirrors;
  - (iv) reverse alarms (and travel alarms for plant where there is restricted operator vision);
  - (v) compulsory safety signage (e.g. hearing protection, SWL, left hand drive, etc.);
  - (vi) horn (exhaust and compression whistles, sirens or alternating tone horns are not acceptable);
  - (vii) amber warning beacon that is switched through the machine engine ignition circuit;
  - (viii) prominently labelled emergency stop devices and hydraulic safety interlocks;
  - (ix) engine fitted with spark arrestor and muffler;
  - (x) a 1.5 kg Dry Powder fire extinguisher within the cabin/canopy;
  - (xi) forward and reverse lights, work lights, tail lights/rear reflectors and side reflective tape (where to be used for night operation); and
  - (xii) "an "Anti-drop" valve for plant used as a crane with a Safe Working Load greater than 3,000 kg;
- (e) have correctly functioning:
- (i) brakes systems (service and park);
  - (ii) emergency stops, interlocks and guarding;
  - (iii) hydraulic systems (including steering or travel levers);
  - (iv) engine i.e. must not emit visible smoke for more than 10 seconds (as per the *Protection of the Environment Operations Act 1997 (NSW)*);
  - (v) controls and switches;
  - (vi) (cabin seating, doors, locks/latches and air conditioning system (where fitted));
  - (vii) electrical systems including lighting (where fitted or required); and
  - (viii) hydraulic hitches for excavators (refer to relevant subclause); and
- (f) have on hand:
- (i) log books, daily diaries/inspection check sheets completed for that shift;

- (ii) the timesheet book issued by the Contractor;
- (iii) Safe Work Method Statements (SWMS) where appropriate and required for the work; and
- (iv) copies of certificates of currency for insurance policies.

#### 4.5 Protective Structures Requirements

- (a) The requirement and standard of protective structures fitted to mobile Plant (earth-moving plant, timber harvesting plant and agricultural tractors) to provide reasonable protection for the machine operator is dependent upon the risks identified for the supply of Services at the Service Site (i.e. operating environment).
- (b) As required by the *Work, Health and Safety Act 2011* (NSW) (**WHS Act**), all mobile plant must be fitted with protective structures as per Table 1.

<b>TABLE 1: Summary of Requirements for Protective Structures for mobile plant</b>	<b>Roll-Over Protective Structures (ROPS)</b>	<b>Falling Object Protective Structures (FOPS)</b>	<b>Operator Protective Guards (OPG)</b>
<b>General work e.g. work in open environments (where no risk of falling objects)</b>	✓	NR	MAY
<b>Work involving risk of falling objects, work in forest environment</b>	✓	✓	MAY
<b>Tree felling operations (e.g. pushing/felling hazardous trees)</b>		✓	MAY

*NR = Not required, MAY = May be required, depending upon the potential for objects or debris to penetrate the cabin*

- (c) The following plant are exempt under the WHS Act from requiring ROPS (unless the risk assessment for the individual works requires it):
  - (i) earth-moving plant having a mass less than 1,500 kg or more than 100,000 kg;
  - (ii) tractors with a mass less than 560 kg and more than 15,000 kg;
  - (iii) hydraulic excavators; and
  - (iv) road rollers or compactors with a mass less than 2,700 kg.
- (d) Machines fitted with ROPS must have suitable operator restraining devices or seat belts.
- (e) Where work involves *Tree Felling Operation* ROPS and FOPS are required with the risk assessment determining whether OPGs are required (and to what standard). If there is doubt about the suitability of any protective structure, then the plant must not be used for the task.
- (f) Sweeps fitted to bulldozers and tractors (for protecting the machine from damage when operating in a forest environment) that are not certified to any standard shouldn't interfere with the function of ROPS or FOPS.
- (g) Where there is a requirement for plant fitted with FOPS and OPG, preference should be given to using plant fitted with *Protective Structures certified to comply with AS2294.1 - Supplement 1* (2003).

- (h) The pre-use assessment for the standard of protective structures required for the task must consider the land management agency policies and standards.

## 5. Plant Operation

### 5.1 General

- (a) Plant must be operated in accordance with the requirements in *Code of Practice: Managing the Risks of Plant in the Workplace* (SafeWork NSW, August 2019) ([www.safework.nsw.gov.au/\\_data/assets/pdf\\_file/0019/52156/Managing-the-risks-of-plant-in-the-workplace-COP.pdf](http://www.safework.nsw.gov.au/_data/assets/pdf_file/0019/52156/Managing-the-risks-of-plant-in-the-workplace-COP.pdf) or [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au)) and in accordance with the plant manufacturer's requirements).
- (b) Where earthmoving or timber harvesting plant is required to operate on public roads it must comply with the operating conditions specified in the NSW Roads and Maritime Services "Conditional Registration Guide". If the plant is required to be walked across or along sealed public roads, unless the machine has rubber tread tracks or tyres matting must be used to prevent damage to the road surface.
- (c) A distance of 30 metres should be maintained between other vehicles and Personnel.

### 5.2 Radio Call signs for Plant

- (a) All Plant and vehicles that are used for the Services must have a radio *Call Sign* that is used to clearly identify the Plant or vehicle. This call sign will be agreed prior to commencement of work.
- (b) This call sign may be:
  - (i) a number that is prominently displayed on the Plant or vehicle; or
  - (ii) the Contractor's name (that is displayed on the machine) followed by the plant type e.g. for a bulldozer operated by Smiths Earth-moving, the call sign could be "*Smiths Dozer*" (for a grader, the call sign would be "*Smiths Grader*" or for a bulk water carrier it would be "*Smiths Bulk Water Carrier*").
- (c) If there are multiple numbers of the same type of the Contractor's plant e.g. bulldozers, then the call signs would be Smiths Dozer Alpha, Smiths Dozer Bravo, etc.
- (d) The agreed call sign will be recorded by a NSW RFS representative onto the "*Resource Tracking*" (or Tee) card, along with the full name of the Contractor's Personnel, the radio channel to be used for communication and their mobile phone number.
- (e) There is no requirement for previously issued NSW RFS heavy plant identification number decals to be displayed on plant. This number is for administrative purposes.

### 5.3 Hot Work and Fire Safety

- (a) The use of welders, oxy-acetylene equipment or angle grinders must only be undertaken after assessing the fire potential risks and ensuring there are adequate fire precautions in place. Hot work on high fire danger days and during days of *Total Fire Ban* shall be subject to approval of NSW RFS.
- (b) Where hot work is to be carried out on plant, the area must be clear of combustible vegetation at least 1.5 metres in all directions. The area should be closed off with screens or other measures to protect others and to restrict unauthorised entry.
- (c) Fires must not be lit by the Contractor without authorisation (lighting of fires is subject to *Rural Fires Act 1997*, Part 4 Div. 5 to 7).



- (d) NSW RFS may assign (where determined to be appropriate) a fire tanker and crew to provide mutual support to the Contractor's Plant during fire operations and during fire weather conditions.
- (e) NSW RFS will not be liable to the Contractor for any interruption to the Services caused by fire or by NSW RFS suspending the Services during any period due to conditions of high to extreme fire danger.
- (f) The Contractor must report of any outbreak of fire arising from the hot work.

#### **5.4 Mechanically assisted tree felling or pushing operations**

- (a) Felling or pushing trees using plant is a hazardous operation where the risks increase when this is undertaken during fire operations (due to the tree being weakened by fire, the presence of fire, smoke, dust and wind). This operation must only be undertaken with prior approval.
- (b) This operation must only be undertaken using plant fitted with the appropriate standard of protective structures (i.e. FOPS and OPG), and by a competent machine operator. If the plant is a bulldozer it should be fitted with a suitable tree pushing arm, or if it is an excavator only machines fitted with grabs may be used.
- (c) Prior to undertaking this operation, the risks must be assessed from a safe distance to determine whether the tree can be safely felled or pushed. This assessment should consider:
  - (i) whether to allow the tree to naturally fall (and other alternatives to felling the tree);
  - (ii) the soundness of the tree (and the point of contact);
  - (iii) overhead hazards (and falling trees will safely clear the machine);
  - (iv) the slope, direction of fall (and effect of and to nearby trees and the slope);
  - (v) the effect of the wind and direction;
  - (vi) whether the tree base will require ripping or cutting; and
  - (vii) the suitability of the plant for the task and capability of the machine operator.
- (d) Before commencing the operation, the area must be closed off from access by all other plant, vehicles and Personnel. The Contractor must ensure that no personnel, plant and vehicles work down slope during the operation. A minimum distance of two times the height of the tree being felled must be maintained (and from any other trees that may fall as a result i.e. beware of the domino effect).
- (e) If there is the potential for the operation to compromise access or egress along the control line, suspend the operation until either the affected crews withdraw or until an alternate escape route can be provided.
- (f) Although the Plant Operator always has the right to refuse to do this work (and the final say in the techniques to be used), the supervising NSW RFS person may halt the work if they feel that unsafe techniques are being used.

#### **5.5 Fire Fighting Operations**

- (a) Where there is the potential for the Plant to be overrun or cut off by fire, the Plant will be supported by a dedicated fire fighting vehicle(s). The Plant Operator and supporting fire crew will be clearly briefed on their respective roles, the mission, tactics, standards of work and emergency procedures.
- (b) These emergency procedures may include:
  - (i) using the identified escape routes to egress to the safety refuge (if time permits);

- (ii) requesting additional support (this may be in the form of extra fire tankers and/or air support);
  - (iii) seeking refuge in burnt ground or an area of low fuel or clearing an area around the machine;
  - (iv) mounding earth between the fire and plant (and digging a trench to park the machine over to enable the operator to seek refuge beneath the machine); and/or
  - (v) switching the engine off to prevent embers to be drawn into the air filters.
- (c) Although assigning fire tankers to support plant operation offers an increased level of protection for the plant operator from fire, this doesn't provide an absolute guarantee of protection as it is limited by fire behaviour and characteristics on the day (as taught in Bushfire Awareness training).
- (d) The Plant Operator should ensure that the minimum safe distances are maintained (but ensure they don't operate too far ahead of their supporting fire vehicle).

## 5.6 Demolition Work

Where Plant is used to demolish, or partially demolish, any building, structure or installation, there must be an approved supervisor on site and the Contractor must hold an appropriate Demolition Licence. If the work requires the removal of asbestos, this must only be done by a Contractor with the appropriate Asbestos Licence with an approved supervisor on site. Refer to SafeWork NSW website for further information on these licences [www.safework.nsw.gov.au/](http://www.safework.nsw.gov.au/)

## 5.7 Excavator Quick Hitches

Refer to SafeWork NSW's position paper 'Supplying, installing and using quick hitches on excavators or backhoes' (June 2015) ([www.safework.nsw.gov.au/\\_data/assets/pdf\\_file/0015/50109/WC01783-0715-294725.pdf](http://www.safework.nsw.gov.au/_data/assets/pdf_file/0015/50109/WC01783-0715-294725.pdf) or <https://www.safework.nsw.gov.au/>).

## 5.8 Timber Harvesting Plant

Plant must be operated in accordance with 'Code of Practice: Safety in Forest Harvesting Operations' (WorkCover NSW (now SafeWork NSW), 2002) ([www.safework.nsw.gov.au/](http://www.safework.nsw.gov.au/)).

## 5.9 Farm Machinery including Tractors

- (a) The Contractor must complete a risk assessment for each item of Plant annually and provide to NSW RFS' Heavy Plant Manager, or any other NSW RFS authorised Personnel as notified by NSW RFS to the Contractor from time to time, addressing medium or higher risk matters as set out in the SafeWork Australia 'General Guide for Managing Risks of Machinery in Rural Workplaces' (September, 2016) ([www.safeworkaustralia.gov.au/doc/guide-managing-risks-machinery-rural-workplaces](http://www.safeworkaustralia.gov.au/doc/guide-managing-risks-machinery-rural-workplaces) or [www.safework.nsw.gov.au/](http://www.safework.nsw.gov.au/)).
- (b) The Contractor must comply with the recommendations in the 'SafeWork NSW Farm Machinery: Fact Sheet' (July, 2020) ([www.safework.nsw.gov.au/resource-library/agriculture,-forestry-and-fishing-publications/farming-publications/farm-machinery-fact-sheet](http://www.safework.nsw.gov.au/resource-library/agriculture,-forestry-and-fishing-publications/farming-publications/farm-machinery-fact-sheet) or [www.safework.nsw.gov.au/](http://www.safework.nsw.gov.au/)).
- (c) When performing services using Plant that are tractors the Contractor is to complete a self-assessment that includes the matters for tractors and related implements and attachments set out in the 'NSW Farm Safety Self-Assessment' ([www.safework.nsw.gov.au/\\_data/assets/pdf\\_file/0007/55852/Farm-safety-self-assessment-8765.pdf](http://www.safework.nsw.gov.au/_data/assets/pdf_file/0007/55852/Farm-safety-self-assessment-8765.pdf) or [www.safework.nsw.gov.au/](http://www.safework.nsw.gov.au/))

## 5.10 Plant involving the Handling of Chemicals

Plant must be operated in accordance with the 'Code of Practice: For Safe Use and Storage of Chemicals (Including Pesticides and Herbicides) in Agriculture', (WorkCover NSW (now SafeWork NSW), 2006).

([www.safework.nsw.gov.au/\\_data/assets/pdf\\_file/0004/52870/Safe-use-and-storage-of-chemicals-including-pesticides-and-herbicides-in-agriculture.pdf](http://www.safework.nsw.gov.au/_data/assets/pdf_file/0004/52870/Safe-use-and-storage-of-chemicals-including-pesticides-and-herbicides-in-agriculture.pdf) or [www.safework.nsw.gov.au/](http://www.safework.nsw.gov.au/))

## 6. Environmental Protection Requirements

### 6.1 General

- (a) The use of earth-moving plant can result in long-term damage to the natural landscape where the cost of rehabilitation exceeds the cost of fire suppression, but also may result in breaches of law and risk fines and/or prosecution.
- (b) Where practical, disturbance of the soil should be minimised with all other possible alternatives to the use of earth-moving plant considered first. Where the use of earth-moving plant is justified, the work should be conducted in a way to minimise the need for rehabilitation work and action taken to minimise the potential for soil erosion, spread of soil borne disease and weeds, to protect waterways, catchments, flora, fauna, overall landscape quality, any significant environmental, cultural, heritage and agricultural assets.
- (c) During fire operations, where possible the use of earth-moving plant must be done in consultation with the land manager. For large scale fires (per Section 44 of the *Rural Fires Act 1997* or Class 3 incidents or may even be a declared State of Emergency), the environmental requirements should be stated in the Incident Action Plan (IAP) and the rehabilitation plan. In addition to or in the absence of this information, the work should be in accordance with the "Minimal Impact Fire Suppression and Rehabilitation Guidelines" in clause 6.3 of this Schedule.
- (d) In general, the Contractor must:
  - (i) avoid unnecessary interference or damage to native plants, animals or their habitats. Where there is the potential for this to occur, the Heavy Plant Manager or other authorised NSW RFS representative must be immediately notified and work suspended until NSW RFS has approved resumption of the work;
  - (ii) where anything is unexpectedly discovered which is believed to be an Aboriginal relic or site, the Heavy Plant Manager or other authorised NSW RFS representative must be immediately notified and work suspended until NSW RFS has approved resumption of the work (interference with, or damage to Aboriginal relics or sites is illegal unless authorised in writing by the NSW Environment, Energy and Science (previously Office of Environment and Heritage)); and
  - (iii) not bring animals into a National Park or other protected site (this is an offence under the *National Parks and Wildlife Act 1974* (NSW));
- (e) The Contractor must ensure:
  - (i) operators are trained or experienced in the techniques and precautions for protecting waterways and for plant hygiene;
  - (ii) that protection areas are retained on each side of drainage features (major water storages, prescribed streams, watercourses, wetlands, drainage lines and drainage depressions);
  - (iii) disposal areas for road drainage water are not cultivated or disturbed;

- (iv) operations cease when soil is saturated or when surface runoff is occurring;
- (v) the location, design and construction of trails utilise ridge tops and other natural features to optimise drainage of the trail surface to either side, that the alignment and track surface allows safe access by fire crews with permanent or temporary drainage constructed as soon as practicable;
- (vi) all servicing and repairs of plant is carried out in a manner that prevents the pollution of waters or contamination of land and at a location approved by NSW RFS;
- (vii) waste (including litter, tyres, drums, wire rope, oils, fluids, etc...) is removed at regular intervals from the Service Site and disposed of at an approved facility;
- (viii) where practical (and where required in the Plant Tasking), Plant is cleaned of weed vegetation or seeds prior to arriving at the Service Site. All efforts should be made to avoid known weed infestations;
- (ix) all equipment washing-down operations are to be conducted in approved locations and in manner to prevent concentration of contaminated runoff into drains and waterways; and
- (x) compliance with any lawful and reasonable instruction in regard to environmental protection.

## 6.2 Fuel Storage and Refuelling

- (a) Bulk fuel storage with a capacity of over 200 litres (other than during transportation) must be located on an area cleared of flammable material or vegetation for a distance of not less than 4.5 metres around the storage. The storage must be free of leaks, accumulated debris and able to be readily removed in an emergency.
- (b) Fuel and oil containers of capacity equal to or less than 25 litres must comply with *AS/NZS 2906 - 2001* (i.e. be designed for the storage of fuel). Such containers are to be stored in an area that is clear of combustible vegetation at least 1.5 metres around the container.
- (c) Refuelling of plant must not be undertaken in proximity of active fire and preferably in a location that is clear of combustible vegetation at least 1.5 metres around the machine.
- (d) Mobile fuel tanks should not be located within 10 m of any water drainage feature. Transport of fuel and refuelling of equipment is undertaken in a manner to prevent escape of fuel and pollution of waterways.

## 6.3 Minimal Impact Fire Suppression and Rehabilitation Guidelines

*Extract from Bush Fire Coordinating Committee (BFCC) - Policy No. 2/2006*  
[www.rfs.nsw.gov.au/\\_data/assets/pdf\\_file/0010/9586/Policy-2-2006-Management-of-Bush-Fire-Operations.pdf](http://www.rfs.nsw.gov.au/_data/assets/pdf_file/0010/9586/Policy-2-2006-Management-of-Bush-Fire-Operations.pdf) or [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au))

- (a) The use of earth moving equipment and retardants are vital to the early suppression of fires therefore minimising the impact of the fire on the environment. However, the placement and use of suppression techniques need to be carefully considered to minimise impact.
- (b) The table below identifies a range of suppression activities. For each activity a number of minimising factors are listed. These should be considered before and during construction and use. The right side of the table outlines some potential results" of suppression activities and corresponding rehabilitation options to be considered.

	<b>Minimal Impact</b>	<b>Rehabilitation</b>			
<b>Activity</b>	<b>Minimising factors</b> (to be considered before and during construction/use)	<b>Results of fire suppression activities</b>	<b>Rehabilitation options</b>		
<b>New trails/control lines constructed</b>	When selecting appropriate line and implementing trail or control line, minimise: <ul style="list-style-type: none"> <li>• soil disturbance: if the blade does not have to disturb the soil</li> <li>• keep it off the ground (e.g. access only required)</li> <li>• line not adequately drained during construction (depends on urgency)</li> <li>• length within steep slopes, including side slope</li> <li>• length within dispersible soils in potentially high rainfall areas</li> <li>• length within close proximity to drainage features</li> <li>• amount of catchment above the trail</li> <li>• disturbance to threatened species/cultural heritage/natural features</li> <li>• not using previously/naturally cleared areas</li> <li>• work carried out by inexperienced and non trained personnel</li> <li>• work carried out by inappropriate machinery</li> <li>• work carried out in wet weather</li> </ul>	Poorly drained trails/control lines (erosion potential)	Install appropriate drainage as per Conservation & Land Management (C&LM) guidelines		
		Unwanted trails/control lines	Restrict/close access and rehabilitate as required by land manager		
		Trail to be maintained	Restrict access. Leave trail open		
		Bulldust present	Remove, redistribute or water bulldust		
		Damaged road surface	Restrict access to area and enable area to settle naturally		
		Damaged drainage structures	Ensure silt movement is managed. Repair as needed, consult road		
		<b>Trails/control lines re-opened</b>	Before re-opening trails, consider factors above and evaluate whether creating a new realigned trail would have less impact. When re-opening trails minimise: <ul style="list-style-type: none"> <li>• soil disturbance (if the blade does not have to disturb the soil keep it off the ground e.g. access only required)</li> <li>• line not adequately drained during construction (depends on urgency)</li> <li>• disturbance to threatened species/cultural heritage/natural features</li> <li>• not using previously/naturally cleared areas</li> <li>• work carried out by inexperienced and non trained personnel</li> <li>• work carried out by inappropriate machinery</li> <li>• work carried out in wet weather</li> </ul>	Poorly trained trails/control lines (erosion potential)	Install appropriate drainage (as per C&LM guidelines)
				Unwanted trails/control lines	Restrict/close access and rehabilitate as required by land manager
Trail to be maintained	Restrict access. Leave trail open				
Bulldust present	Remove, redistribute or water bulldust				
Damaged road surface	Restrict access to area and enable area to settle naturally				
Damaged drainage structures	Ensure silt movement is managed				

	<b>Minimal Impact</b>	<b>Rehabilitation</b>	
<b>Activity</b>	<b>Minimising factors</b> (to be considered before and during construction/use)	<b>Results of fire suppression activities</b>	<b>Rehabilitation options</b>
<ul style="list-style-type: none"> <li>When considering minimal impact techniques, special consideration should be given to avoidance of sensitive areas such as Cultural and European Heritage areas, Social Assets and Environmental Assets. Where these issues are in areas to be considered for suppression, avoidance is best, minimal disturbance is less optimal. Please consult experienced people for advice where appropriate.</li> <li>Vehicle/plant/equipment hygiene is also important in fire suppression. Vehicles need to be cleaned when being moved in and out of known infected areas. This information needs to be provided to operators at an incident.</li> </ul>			
<b>New helipads constructed</b>	When selecting appropriate locations for, and using, new helipads, minimise: <ul style="list-style-type: none"> <li>vegetation removal</li> <li>soil disturbance: if the blade does not have to disturb the soil, keep it off the ground (e.g. access only required)</li> <li>areas not adequately drained during construction (depends on urgency)</li> <li>locating in dispersible soils in potentially high rainfall areas</li> <li>areas within close proximity to drainage features</li> <li>disturbance to threatened species/cultural heritage/natural features</li> <li>not using previously/naturally cleared areas</li> <li>work carried out by inexperienced and non trained personnel</li> <li>work carried out by inappropriate machinery</li> <li>work carried out in wet weather</li> <li>areas where visibility /aesthetics is an issue</li> <li>areas where sensitive animals/communities are present (i.e. evaluate noise pollution issues)</li> </ul>	Helipad to be maintained	Ensure appropriate drainage features are in place Remove rubbish Restrict access if required
		Unwanted helipad	Close and rehabilitate in consultation with land manager
<b>Re-opening old helipads</b>	Before re-opening helipads, consider factors above and evaluate whether creating a new helipad would have less impact. When re-opening old helipads minimise: <ul style="list-style-type: none"> <li>vegetation removal</li> <li>soil disturbance: if the blade does not have to disturb the soil, keep it off the ground (e.g. access only required)</li> </ul>	Helipad to be maintained	Ensure appropriate drainage features are in place Remove rubbish Restrict access if required
		Unwanted helipad	Close and rehabilitate in

	<b>Minimal Impact</b>	<b>Rehabilitation</b>	
<b>Activity</b>	<b>Minimising factors</b> (to be considered before and during construction/use)	<b>Results of fire suppression activities</b>	<b>Rehabilitation options</b>
	<ul style="list-style-type: none"> <li>• areas not adequately drained during construction (depends on urgency)</li> <li>• disturbance to threatened species/cultural heritage/natural features</li> <li>• work carried out by inexperienced and non trained personnel</li> <li>• work carried out by inappropriate machinery</li> <li>• work carried out in wet weather</li> </ul>		consultation with land manager
<b>Staging Area Assembly Area, Control Points</b>	<p>When creating or using areas for Staging Areas, Assembly Areas or Control Point's, minimise:</p> <ul style="list-style-type: none"> <li>• soil disturbance: if bare earth is not required maintain some vegetation cover</li> <li>• areas not adequately drained</li> <li>• use of areas within dispersible soils in potentially high rainfall areas</li> </ul>	Area with vegetation Removed and unwanted clearing	<p>Close and rehabilitate area in consultation with land manager</p> <p>Ensure appropriate drainage features are in place</p> <p>Remove rubbish</p>
	<ul style="list-style-type: none"> <li>• use of areas within close proximity to drainage features</li> <li>• disturbance to threatened species/cultural heritage/natural features</li> <li>• not using previously/naturally cleared areas</li> <li>• work carried out by inexperienced and non trained personnel</li> <li>• work carried out by inappropriate machinery</li> <li>• work carried out in wet weather</li> <li>• It must be realized that traffic flows, (including timing, size of equipment and regularity) create noise pollution and congestion. Appropriate access and traffic control is required</li> </ul>	Areas to be maintained for future Staging Areas, Assembly Areas or Control Point's	<p>Remove rubbish</p> <p>Ensure appropriate drainage features are in place Seed appropriate areas to establish ground cover</p> <p>Consult land owner</p>
<b>Use of retardant, foam, salt water</b>	Due to the non-endemic chemical and surfactant nature of these products, avoid using in close proximity to drainage features, water bodies and wetlands.	Drainage features, water body or wetland with retardant, foam or salt water drops within	Note and monitor

## 7. Contractor's Personnel

### 7.1 Bushfire Awareness (BFA) training:

- (a) The Contractor's Personnel are required to have completed accredited Bushfire Awareness (**BFA**) training (or higher), wear the minimum standard of bushfire personal protective clothing/equipment as listed in this Schedule 1 (Operational Requirements) and have experience in operating in remote and isolated locations (including map reading, navigation and radio communication skills).
- (b) Refresher training can be provided by NSW RFS by arrangement. Although there is no charge for this training for the Contractor, NSW RFS is not liable for other costs (such as travel and accommodation costs) associated with the Contractor's Personnel attending this training.
- (c) Where the Contractor's Personnel already holds BFA training qualification (or higher), it must be current within the past 3 years.
- (d) An identification card will be issued by NSW RFS where evidence of completion of this training has been provided (or if personnel are members of the NSW RFS, provide their name and membership number). Identification cards must be carried by the Contractor's Personnel whenever providing Services to NSW RFS.

### 7.2 Personal Protective Clothing and Equipment

- (a) The Contractor's Personnel are required to wear personal protective clothing and equipment (PPE/C) as appropriate for the operation of the Plant and for work undertaken.
- (b) As a minimum, the following is required:
  - (i) **Long trousers and long sleeved protective clothing** of natural fibre (cotton or wool) complying with *AS/NZS 4501.2:2006 Occupational protective clothing - General requirements*;
  - (ii) **High visibility clothing** complying with *AS/NZS 4602.1:2011 High visibility safety garments - Garments for high risk applications*;
  - (iii) **Protective boots** complying with *AS/NZS2210.1:2010 Safety, protective and occupational footwear - Guide to selection, care and use* or *AS/NZS4821:2006 Protective footwear for fire fighters - Requirements and test methods*;
  - (iv) **Helmet** which complies with *AS/NZS1801:1997*, as per 7.3(a)(ii);
  - (v) **Hearing protection** that complies with *AS/NZS1270:2002: Acoustics - Hearing protectors*; and
  - (vi) **Protective mask** of a disposable particle filter type (Class P2), complying with *AS/NZS1716:2012 Respiratory protective devices, to be used in instances of high dust levels*.
- (c) This PPE/C must be in accordance to SafeWork NSW and industry Standards.
- (d) As appropriate for the Tasks to be performed, the following additional PPE/C must be worn (over natural fibre clothing and under garments):
  - (i) **Helmet** with chinstrap and neck protector complying with *AS/NZS1801:1997, AS/NZS1801/Amendment 1/1999, occupational protective helmets, Type 3 - helmets intended for bushfire fighting*;
  - (ii) **Protective eyewear** with wide vision goggles as complying with *AS/NZS1337:1992*;
  - (iii) **Protective (flash) Hood** complying with NFPA1971 -2000 standard;



- (iv) **Protective gloves** complying with *AS2161.6-2003 Protective gloves for Wildland fire-fighters*;
  - (v) **Protective clothing** consisting of single-piece overalls or two piece garment, which comply with *AS/NZS 4824:2006 Protective clothing for Wildland fire-fighters*;
  - (vi) **Protective boots** complying with *AS/NZS4821:2006 Protective footwear for firefighters - Requirements and test methods*; and
  - (vii) **Protective mask** of a disposable particle filter type (Class P2), complying with *AS/NZS1716:2012 Respiratory protective devices*.
- (e) Personnel undertaking removal of asbestos must wear appropriate PPC/E.
  - (f) Protective clothing must be maintained in a clean and serviceable condition.

### 7.3 Training and competencies

- (a) Where Personnel are operators of earthmoving plant, they are required to have:
  - (i) more than 1,000 hours of experience in operating the item of plant;
  - (ii) Qualifications and/or equivalent knowledge and experience in access trail construction and drainage; soil and water protection practices; environmental management practices; machinery hygiene and bio-security protection practices; mechanically assisted hazardous tree felling operations (if engaged for this work) and building demolition and working with asbestos (if engaged for this work).
- (b) Approved supervisors for demolition work must be over 18 years and have:
  - (i) completed the Demolition Supervision (Restricted) Course or where required, the Demolition Supervision (Unrestricted) Course;
  - (ii) three years' experience in demolition or a relevant building related trade for restricted demolition; or
  - (iii) three years' experience in supervising demolition work.
- (c) Approved supervisors for asbestos removal work must be older than 18 years and have:
  - (i) 12 months industry experience in the removal of the category of asbestos; and
  - (ii) completed the Nationally recognised course for supervising asbestos removal.
- (d) If the Contractor's Plant is an excavator with quick hitch attachment its Personnel performing Services using that Plant must have evidence of completing appropriate competency-based training.
- (e) If the Contractor's Plant is a forklift (including a tractor with an attachment used in a way that the Plant could reasonably be considered a forklift) the Contractor's Personnel operating that Plant must have a high risk work licence (class LF).  
 For example: use of a tractor with forklift tines and an elevating mast (i.e. a full mast assembly with rise and fall and the facility to tilt) may be considered a forklift. The specifications of the attachment will be material to determining whether a tractor using the attachment will be considered a forklift.
- (f) If the Contractor's Plant is a tractor, its Personnel performing Services using that Plant must have evidence of completing appropriate competency-based training.

## 8. Technical Standards – protective structures and restraint devices

Protective structures and operator restraint devices fitted to plant should be designed and certified to comply with the following Standards:

- (a) *AS1636: Tractor Roll-Over Protective Structures - Criteria and Tests - Conventional Tractors;*
- (b) *AS2294.1 Supplement 1 (2003): Earthmoving Machinery - Protective Structure-General - Operator Protective Structures fitted to plant used in timber industry (forest operations), Supplement to AS2294.1 (1997);*
- (c) *AS2664 (1983): Earth-moving Machinery - Seat Belt and Seat Belt Anchorages;*
- (d) *AS4987 (2002): Earth-moving Machinery - Protective Structures - Laboratory tests and performance requirements for Tip-over Protection Structure for compact excavators (operating mass 1,000 - 6,000kg);*
- (e) *AS4988 (2002): Earth-moving Machinery - Hydraulic Excavators - Laboratory tests and performance requirements for Operator Protective Guards;*
- (f) *ISO3449 (2005): Earth Moving Machinery - Falling-object protective structure - Laboratory tests and performance requirements (ISO 3449:1992);*
- (g) *ISO3463 (2006): Tractors for Agriculture and Forestry - Roll-over protective structures (ROPS) - Dynamic test method and acceptance conditions;*
- (h) *ISO3471 (2010-01): Earth Moving Machinery - Roll-over protective structures - Laboratory tests and performance requirements (ISO 3471:2008);*
- (i) *ISO8083 (1989): Machinery for forestry - falling object protective structures - Laboratory tests and performance requirements;*
- (j) *ISO8084 (2003): Machinery for forestry - Operator protective structures - Laboratory tests and performance requirements;*
- (k) *ISO12117-2 (2008): Earth-moving machinery - Laboratory tests and performance requirements for protective structures of excavators - Part 2: Roll-over protective structures (ROPS) for excavators of over 6T - HEX 6 Tonnes and above;*
- (l) *OHSA - 29CFR 1926.1001 – Minimum performance criteria for Roll-Over Protective Structures (ROPS) for rubber tired, self-propelled scrapers, rubber tired front-end loaders and rubber tired dozers, crawler tractors and crawler type loaders and motor graders;*
- (m) *OHSA - 29CFR 1926.1002 - Protective frames for Roll-Over Protective Structures (ROPS) for wheeled type agricultural and industrial tractors used in construction;*
- (n) *SAE J1194 - Minimum performance requirements of Roll-Over Protective Structures (ROPS) designed for wheel-type agriculture.*