

**REGISTER OF
CONTRACT AGREEMENTS**

CONTRACT AGREEMENT NO: CA15/1

TITLE: Holcim (Australia) Pty Ltd NSW Concrete Lorry Owner Driver Contract Agreement

I.R.C. NO: IRC15/92

DATE APPROVED/COMMENCEMENT: 25 February 2015 / 25 February 2015

TERM: 36 months

**NEW AGREEMENT OR
VARIATION:** New.

GAZETTAL REFERENCE: 27 Mar 2015

DATE TERMINATED:

NUMBER OF PAGES: 67

COVERAGE/DESCRIPTION OF

EMPLOYEES: This Agreement applies to Lorry Owner Drivers engaged by Hocim (Australia) Pty Ltd, located at 799 Pacific Highway, Chatswood NSW 2067, to supply and operate concrete trucks and agitators within New South Wales.

PARTIES: Holcim (Australia) Pty Ltd -&- the Transport Workers' Union of New South Wales

Holcim (Australia) Pty Ltd
NSW Concrete
Lorry Owner Driver Contract Agreement

This Contract Agreement is made pursuant to section 322(2) of the *Industrial Relations Act 1996* (NSW) and relates to contracts entered into between Holcim (Australia) Pty Ltd and Lorry Owner Drivers for the provision of cartage services to its Concrete business in New South Wales.

1. PARTIES:

The Parties to this Agreement are:

- (1) **Holcim (Australia) Pty Ltd** ACN 099 732 297 whose registered office is at Tower B, Level 8, 799 Pacific Highway, Chatswood NSW 2067 (**Holcim**); and
- (2) **The Transport Workers' Union of New South Wales** (the **TWU**), an association of contract carriers under the *Industrial Relations Act 1996* (NSW), on behalf of Lorry Owner Drivers engaged by Holcim to provide cartage services under the terms of this agreement (the **LODs**).

2. BACKGROUND

- 2.1** Holcim carries on the business of supplying aggregates, concrete (ready-mix) and concrete pipe and products.
- 2.2** Holcim requires the LODs to provide cartage services that include the supply and operation of concrete trucks and agitators for the purpose of effecting deliveries of Holcim concrete to Holcim customers.
- 2.3** LODs providing cartage services to Holcim have nominated the TWU as their bargaining agent for the purposes of entering into this Agreement.

3. APPLICATION

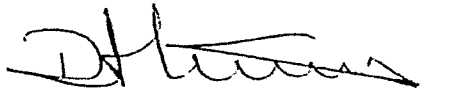
- 3.1** This agreement applies to LODs engaged by Holcim to supply and operate concrete trucks and agitators within New South Wales who accept the terms and conditions set out in Schedule A.
- 3.2** If an LOD does not accept the terms and conditions set out in Schedule A, the LOD will continue to be covered by the *Transport Industry – Readymix Holdings Pty Ltd Concrete Cartage Contract Determination* or such other contractual arrangement with Holcim as may apply to that particular LOD.

4. **TERM OF AGREEMENT**


4.1 This agreement will remain in force for a period of three (3) years from the date of approval by the Industrial Relations Commission of New South Wales.

(Note: It is the intention of the parties to commit to the terms of this agreement for a period of at least ten (10) years to reflect the contract term referred to in Clause 3 of Schedule A.)

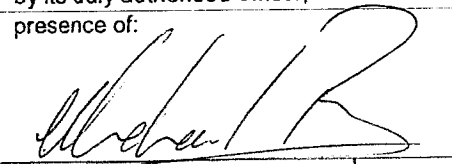
SIGNED on behalf of Holcim (Australia)
Pty Ltd ACN 099 732 297 by its duly
authorised officer, in the presence of:


Signature of witness

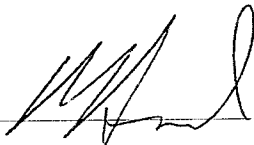
RACHEL LEWIS
Name


Signature
HANS FUCHS
Name

SIGNED on behalf of The Transport
Workers' Union of New South Wales
by its duly authorised officer, in the
presence of:


Signature of witness

Michael Pieri
Name


Signature
MICHAEL AIRD
Name

SCHEDULE A

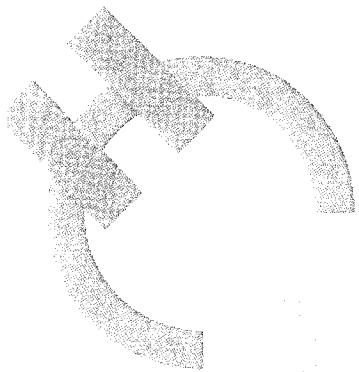


SCHEDULE A

Holcim (Australia) Pty Ltd

NSW Concrete

Lorry Owner Driver Contract Agreement



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Date	
Parties	
1.	Holcim (Australia) Pty Ltd (ACN 099 732 297) carrying on business at Tower B, Level 8, 799 Pacific Highway, Chatswood NSW 2067 (Holcim)
2.	The entity described in item 1 of Schedule 1 (the LOD)

It is agreed as follows.

1. INTERPRETATION

1.1 Definitions

In this document:

6 Wheeler means a Concrete Truck with three (3) axles and six (6) wheel positions.

8 Wheeler means a Concrete Truck with four (4) axles and eight (8) wheel positions.

10 Wheeler means a Concrete Truck with five (5) axles and ten 10 wheel positions

Accounting Period means a calendar month unless varied by notice from Holcim.

Additional Payments means those payments specified in clause 6.

Agitator means the mixing equipment necessary to mix and transport concrete by a Concrete Truck. It is also referred herein as "the mixer".

Agreement means this Schedule A to the Holcim NSW Concrete Lorry Owner Driver Contract Agreement.

Amenities mean the Drivers' lunchroom and toilet facilities at a Plant.

Average Group Productivity means the average annual paid cubic metres carried by a group of LODs in an Utilisation Group.

Award means the *Transport Industry (State) Award (NSW) (State Award)*, or the *Road Transport and Distribution Award 2010 (Modern Award MA000038)* if the State Award no longer exists.

Business Day means a day which is not a Saturday, Sunday or bank or Public Holiday in the Operational Area.

Claims includes actions, causes of action, potential causes of action, investigations, prosecutions, suits, legal proceedings, disputes, differences, rights, duties, obligations, liabilities, responsibilities, accounts, interests, costs (whether or not the subject of a court order) and demands.

Commencement Date means the date upon which this Agreement is approved by the Industrial Relations Commission of NSW in accordance with the *Industrial Relations Act 1996* (NSW).

Concrete means pre mixed concrete manufactured by Holcim and any other materials that can be delivered in a Concrete Truck as may be designated by Holcim.

Concrete Truck means a vehicle used to transport and deliver pre mixed concrete, and subject to clause 17, to mix the concrete.

Confidential Information means all information and materials in any form concerning Holcim, its customers or suppliers, and includes without limitation, information regarding Holcim's business or financial activities, pricing or quoting structures or any other information which Holcim indicates to be Confidential Information, but does not include materials which are in the public domain other than by way of unauthorised disclosure.

Configuration means the classification of a Concrete Truck by reference to its Load Capacity as follows:

- (a) 6 Wheeler Truck;
- (b) 8 Wheeler Truck; or
- (c) 10 Wheel Truck; or
- (d) any other classifications designated by Holcim from time to time.

Contract Term means:

- (a) where an LOD is operating an 8 Wheeler Truck at the Commencement Date and the LOD introduces a New Truck in accordance with clause 3.2(a), a term of ten (10) years from the expiry of the Initial Term; or
- (b) where an LOD is operating a 6 Wheeler Truck at the Commencement Date and the LOD introduces a New Truck in accordance with clause 3.3, a term from the date of the expiry of the Initial Term until 30 April 2027.

Corporations Act means the *Corporations Act 2001* (Cth).

Customer Service Levels means the provision of efficient, timely and competitive service to meet customers' expectations and requirements.

Cyclic Start Roster means a start of day roster based on a "first out yesterday, last out today" system with the effect that each Concrete Truck will move through the cycle from starting first to starting last and, on successive days, all points in between, subject to customer service requirements.

Driver means the LOD or a person employed or engaged by the LOD and nominated by the LOD to operate a Concrete Truck and/or Agitator for the LOD pursuant to clause 16 of this Agreement.

Force Majeure has the meaning given in clause 40.

Holcim's Normal Trading Hours means 6:00 am to 6:00 pm Monday to Friday and from 6:00 am to 1:00 pm Saturday or as otherwise varied by Holcim. For the avoidance of doubt, any other time is considered to be "Outside Holcim's Normal Trading Hours" for the purpose of this Agreement and includes, but is not limited to, night work, Sundays and Public Holidays.

Holcim Representative means the Holcim Plant Manager (Officer in Charge) or his/her delegate.

Home Plant means the Plant to which an LOD is allocated for the purposes of determining Utilisation Cartage Rates under Holcim's internal transport management system.

Initial Term means:

- (a) where the LOD is operating an 8 Wheeler Truck at the Commencement Date, the period of time between the Commencement Date and 30 April 2017;
- (b) where the LOD is operating a 6 Wheeler Truck at the Commencement Date, the period of time commencing on the date referred to in clause 3.3(b) and ending 9 months after that date, unless otherwise extended in Holcim's absolute discretion; or
- (c) where the LOD is operating a 6 Wheeler Truck at the Commencement Date and Holcim determines in its absolute discretion that it does not require the LOD to upgrade its truck in accordance with clause 3.3(a), the period of time between the Commencement date and 30 April 2017.

Insolvency Event means:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven (7) days;
- (e) a receiver or receiver and manager is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of a person;
- (h) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members, or a moratorium involving any of them;
- (i) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven (7) days or a person presents a petition against himself or herself;
- (j) a person presents a declaration of intention under section 54A of the *Bankruptcy Act 1966* (Cth); or
- (k) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

Load Capacity means the lesser of:

- (a) the maximum legal carrying capacity of the LOD's Concrete Truck; and

- (b) the manufacturer's nominated maximum capacity of the Agitator.

Lorry Owner Driver or LOD means a "carrier" as defined in the *Industrial Relations Act 1996* (NSW) and the party set out in item 1 of Schedule 1 who is the Owner and principal driver of the vehicle that supplies and operates the Concrete Trucks and/or Agitators for the purpose of effecting deliveries of concrete to Holcim customers.

Minor Maintenance for the purposes of clause 17 shall include replacement of globes and clearance lights, all backup alarm maintenance, fitting of mud flaps, greasing of rollers and any fluid inspections.

New Truck, New 6 Wheeler Truck, New 8 Wheeler Truck or New 10 Wheeler Truck means:

- (a) a truck that is less than one (1) year of age from the year of manufacture; or
- (b) where the LOD's Home Plant is one of Bowral, Nowra, Byron Bay or Tweed Heads, a truck that is less than five (5) years of age from the year of manufacture.

Old Cartage Rates means the cartage rate for concrete carried by the LOD's Concrete Truck(s) at the utilisation cartage rates, and where applicable, any additional payments, payable in accordance with the *Transport Industry – Readymix Holdings Pty Ltd Concrete Cartage Contract Determination*, as amended from time to time.

Operational Area means the Area described in Schedule 1.

Operational Requirements means all factors which may, in Holcim's opinion, affect the operating efficiency, volume or quality of concrete produced, profitability of one or more Plants or otherwise affect in any way one or more Plants or any aspect of Holcim's concrete and related businesses.

Owner has the same meaning as defined in the *Road Transport Act 2013* (NSW).

LOD's Service Obligations means those of the LOD's obligations under this Agreement which relate to the loading, mixing, transportation and delivery of concrete and other designated materials, and those relating to rostering, occupational health and safety and information and documentation required in respect of deliveries of concrete and other designated materials to customers.

Party means Holcim or the LOD as the context requires, (and "Parties" shall have a corresponding meaning).

Plant means a batching plant where concrete and similar batched materials are manufactured for delivery in a Concrete Truck.

Public Holiday means a day declared and gazetted as such for the Operational Area.

Quarter means each three-month period ending on 31 March, 30 June, 30 September and 31 December each year.

Rejected Concrete means concrete that does not meet the product specification detailed on the delivery docket and is unacceptable for delivery.

Related Bodies Corporate has the meaning given by section 50 of the Corporations Act.

Returned Concrete means concrete that is excess to a particular customer's requirements.

Roster Off means the period during which the LOD's services are not required by Holcim for the balance of a Working Day.

Safety Improvement Teams has the meaning set out in clause 36.1.

Safety Net Payment means the payment referred to, and calculated in accordance with, clause 5 and Schedule 2 (and "Safety Net" shall have a corresponding meaning).

Slump means a measure of consistency of concrete as determined in accordance with Australian Standard AS1012 (as amended).

Subcontractor means a person appointed by the LOD in accordance with the provisions of this Agreement.

True Cost Formula means the formula upon which Utilisation Cartage Rates may be varied arising from cost variations calculated from a base of predetermined indices.

Utilisation Cartage Rates means the cartage rates paid for various annualised levels of truck productivity measured in cubic metres per truck per year (m³/truck/year) as set out in Schedule 2.

Utilisation Group means a group of Concrete Trucks having the same configuration and including the LOD's Concrete Truck, or an individual LOD's truck standing alone as its own group

Working Day means any day on which Holcim requires an LOD to provide services pursuant to this Agreement (and "Work Day" shall have a corresponding meaning).

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) includes means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
- (g) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
- (h) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- (i) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (j) a right includes a benefit, remedy, discretion and power;
- (k) time is to local time in the Operational Area;
- (l) \$ or "dollars" is a reference to Australian currency;
- (m) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;

- (n) a clause or Schedule is to a clause or Schedule of this Agreement;
- (o) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission; and
- (p) this document includes all Schedules and annexures to it; and
- (q) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

2. AGREEMENT CONDITIONAL

This Agreement remains at all times, conditional on the following provisions:

2.1 LOD to be incorporated

The LOD must be, and must remain, at all times during the Initial Term and Contract Term of this Agreement, a company duly incorporated pursuant to the Corporations Act.

2.2 Trust

If the LOD is a trustee of a trust, the LOD:

- (a) acknowledges and agrees that it enters into this Agreement in its own right and as trustee of any trust of which it is a trustee;
- (b) warrants that it has full legal capacity and power to enter into, and perform, its obligations under this Agreement;
- (c) warrants that this Agreement constitutes a valid and legally binding obligation on it in accordance with its terms;
- (d) warrants that by entering into this Agreement, it will not breach any trust deed, deed of variation of trust deed, constitution or equivalent document, instrument of appointment, or any other agreement to which it is a party, or which is binding on it, or any of its property, or any property of the trust; and
- (e) warrants that it is liable to be indemnified out of the assets of any trust of which it is trustee.

2.3 Director to be a Driver and to Hold 50 per cent of LOD's Shares

- (a) The Driver must be a director of the Company and must hold at least 50 per cent of the shares in the Company.
- (b) An LOD who employs a driver to drive, whether approved under clause 16.3 of this Agreement by Holcim or not, on a full time basis or for a period other than when the LOD is on approved leave, is in breach of this Agreement.

2.4 Evidence to be Provided

- (a) The commencement of this Agreement is subject to the LOD providing Holcim with evidence of compliance with the requirements set out in clauses 2.1 to 2.3 above.
- (b) Holcim may request the LOD to provide evidence of its continued compliance with these provisions at any time during the Initial Term or the Contract Term. A failure by the LOD to comply with such request/s by Holcim may result, at Holcim's discretion, in a termination of this Agreement under clause 9.1.

3. INITIAL TERM AND CONTRACT TERM

3.1 Initial Term

Subject to clause 3.3, this Agreement will commence on the Commencement Date and will continue for the Initial Term, unless terminated earlier in accordance with this Agreement.

3.2 Contract Term

- (a) This Agreement will continue beyond the expiry of the Initial Term for the Contract Term (unless terminated earlier in accordance with this Agreement), in the following circumstances:
- i. where the LOD is operating an 8 Wheeler Truck at the Commencement Date and the LOD introduces a New Truck at any time before the expiry of the Initial Term; or
 - ii. where the LOD is operating a 6 Wheeler Truck at the Commencement Date and the LOD introduces a New Truck at any time before the expiry of the Initial Term in accordance with clause 3.3.
- (b) For the avoidance of doubt, unless otherwise agreed, where the LOD has not complied with clause 3.2(a) on or before the expiry of the Initial Term, this Agreement will terminate at the end of the Initial Term and the LOD will not be granted the Contract Term under clause 3.2(a). If the Agreement terminates in accordance with this clause 3.2(b), the parties agree that the LOD is not entitled to compensation for the purposes of clause 9.2.
- (c) Notwithstanding clause 3.2(a), where an LOD's Home Plant is a Plant other than a Plant located in the Sydney/Wollongong/Newcastle Metropolitan areas, the LOD may, in consultation with Holcim and the delegates, purchase a used Concrete Truck and Agitator. The Concrete Truck and Agitator must be newer than 2009. The Concrete Truck and Agitator must otherwise comply with the terms of this Agreement.

3.3 Conditions precedent for LOD operating 6 Wheeler Truck

- (a) Where the LOD is operating a 6 Wheeler Truck at the Commencement Date, the commencement of the Initial Term will be conditional upon and subject to:
- i. the LOD committing in writing before the 1st of May, 2015 that they intend to upgrade to an 8 or 10 wheel vehicle; and
 - ii. the LOD providing Holcim with, in Holcim's opinion, satisfactory evidence that the LOD has ordered a New 8 Wheel or 10 Wheel Truck in accordance with clause 3.3(a)i before the 1st of August 2015, and
 - iii. the LOD will take all reasonable decisions and actions required to introduce the new vehicle identified in clause 3.3(a)ii before the 1st of January 2016
- (b) Holcim will notify the LOD in writing if the evidence provided to it by the LOD in accordance with clause 3.3(a)ii is satisfactory to Holcim. The Initial Term will commence on the date that the LOD receives this notification from Holcim.
- (c) For the avoidance of doubt, subject to clause 3.3(d), where the LOD is operating a 6 Wheeler Truck at the Commencement Date and does not comply with clause 3.3(a)i and clause 3.3(a)ii, the Initial Term will not commence and the LOD's

contract will terminate within 90 days or the actual date the contract terminates, whichever is the latter.

- (d) Notwithstanding clause 3.3(a), subject to Holcim's business needs, Holcim may determine, in its absolute discretion, where the LOD is operating a 6 Wheeler Truck at the Commencement Date, that Holcim does not require the LOD to upgrade its truck to an 8 Wheeler or 10 wheel Truck in accordance with clause 3.3(a). If Holcim determines that it does not require the LOD to upgrade its truck, the Initial Term will commence on the Commencement Date.
- (e) If Holcim does not require the LOD to upgrade its truck to an 8 Wheeler or 10 Wheel Truck in accordance with clause 3.3(d), the LOD must introduce a New 6 Wheeler Truck on or before 30 April 2017.

4. RATE AND PAYMENTS

4.1 Summary of Entitlements

- (a) Subject to clause 4.1(b) and to the LOD complying with the provisions of this Agreement, Holcim will pay to the LOD:
 - i. a cartage rate for concrete carried by the LOD's Concrete Truck(s) at the Utilisation Cartage Rates referred to in clause 4.4 of this Agreement and calculated in accordance with the formula contained in Schedule 2 ; and
 - ii. where applicable, the Additional Payments as provided by clause 6.

Note: Holcim shall pay to the LOD any Safety Net Payment due in accordance with clause 5 of this Agreement provided that the conditions of clause 5 are met.

- (b) Holcim will not pay the LOD in accordance with clause 4.1(a) unless and until the LOD introduces a New Truck in accordance with clause 3.2. Until the LOD introduces a New Truck, Holcim will pay the LOD the Old Cartage Rates.

Note: A three (3) metre and three (3) kilometre minimum shall apply to all cartage except where otherwise specified. A four (4) metre minimum shall apply for all cartage in excess of 25 kilometres.

4.2 Contents of Schedule 2

The Parties acknowledge that Schedule 2 contains, amongst other matters:

- (a) a True Cost Formula which details the costs of labour, running costs (including repair and service costs) and return on funds employed necessary to operate a Concrete Truck, which figures are subject to stated assumptions and subject to increase in accordance with the provisions of Schedule 2; and
- (b) per cubic metre volume incentives, running rates (i.e. per kilometre rate) and load fees based on various levels of paid carted cubic metres per Concrete Truck per year.

4.3 Average Group Productivity Review to Enable Calculation of Utilisation Cartage Rate

- (a) On or before the 15th day of the calendar month after the end of each Quarter, Holcim will calculate the Average Group Productivity for the previous Quarter. The Average Group Productivity calculated on a moving annual total basis, will

measure the average volume of paid carted quantities (other than concrete produced on Sundays and Public Holidays) for all Concrete Trucks of the same configuration in the relevant Utilisation Group to which the LOD belonged, or the individual LOD's Concrete Trucks where the LOD is not allocated to a Utilisation Group in excess of one (1) truck, which will then determine the Utilisation Cartage Rate to be paid to the LOD for the relevant period as detailed in clause 4.1. All calculations under this clause exclude the company owned fleet or any other fleet engaged by Holcim for the purposes of carting concrete.

- (b) In calculating the Average Group Productivity, Holcim will have regard to:
- i. the paid metres carted during the relevant Quarter by all LODs in the same Utilisation Group;
 - ii. the number of LODs' Concrete Trucks in the Utilisation Group for the Quarter;
 - iii. the number of Working Days for all LODs in the Utilisation Group in the Quarter after deduction of the unavailable days during the Quarter as a result of authorised and unauthorised absence and vehicle breakdown.
- (c) Unavailability will not arise where:
- i. the nominated Plant is closed or unable to produce concrete;
 - ii. the LOD has previously been notified by Holcim that the LOD is not required to perform services on the relevant day;
 - iii. Force Majeure has occurred; or
 - iv. the LOD is on leave approved by the Transport Manager.

4.4 Calculation of Utilisation Cartage Rate

Subject to clause 5 and the provisions of Schedule 2, the LOD will be entitled to be paid a cartage rate based on the paid metres carted during the relevant Quarter for the volume carted by the LOD at the Utilisation Cartage Rates specified in Schedule 2 based on the average productivity volume as determined by the Average Group Productivity analysis applicable to the Utilisation Group to which the LOD belongs. A Utilisation Group will be as determined by Holcim, in its discretion, having regard to the needs of the business, provided that there will be no changes to a Utilisation Group once determined, without prior consultation.

4.5 Variation of Rates for Rise and Fall Purposes

On March 31 each year the cartage rates payable under this Agreement will be reviewed for rise and fall purposes pursuant to the formula contained in Schedule 2. If the rates are varied as a result of that review, the varied rates will take effect from 16 April.

Other rise and fall reviews pursuant to Schedule 2 will be carried out on September 30, December 30 and June 30 of each year, but for fuel only. If the rates are varied as a result of that review, the varied rates will take effect from 16 of the following month in which the review is carried out.

5. SAFETY NET PAYMENTS

5.1 Purpose

This Agreement provides that in certain circumstances where the earnings of the LOD fall below the level specified in clause 5.2, then the LOD is entitled to be paid a Safety Net Payment as provided in clause 5.2 and Schedule 2. It is intended that the Safety Net Payment calculations will be done on a quarterly basis. Where a Safety Net Payment is made the LOD is obliged to reimburse Holcim for the payment over the next quarter provided the earnings of the LOD exceed the minimum levels which trigger the Safety Net Payment.

5.2 Calculation

The amount of the Annual Earnings Safety Net Payment is specified in Schedule 2. Holcim shall pay the LOD an amount not exceeding one quarter of the Annual Earnings Safety Net Payment per Quarter if the LOD has earned less than one quarter of the Annual Earnings Safety Net Payment at the end of the relevant Quarter. The amount payable shall be calculated in accordance with the following formula:

$$\text{Quarter Safety Net Payment} = (\text{ASN} \div 4) - Y$$

Where:

ASN equals Annual Earnings Safety Net Payment; and

Y equals the actual total LOD earnings during the relevant Quarter.

The Quarter Safety Net Payment shall be made in the pay period following the end of the relevant Quarter.

5.3 Working Week for Purpose of Calculation

The normal working week for the purpose of calculation of Safety Net Payments is six (6) consecutive days, Monday to Saturday inclusive, to a total of 268 days per annum. Any quarterly Safety Net Payment payable to the LOD will be reduced by 4 / 268ths per day for each day the LOD is deemed to be unavailable. The LOD will be deemed to be unavailable if:

- (a) the LOD fails to provide services to Holcim as obliged by this Agreement;
- (b) the LOD is in persistent breach of an obligation under this Agreement which the LOD has previously been notified of as a breach by Holcim; or
- (c) the LOD is not having its Concrete Truck loaded with concrete by Holcim for any of the reasons referred to in any of clauses 15.9(c), 16.6 and 17.4(c).

Unavailability will not arise if:

- (a) the nominated Plant is closed or unable to produce concrete; or
- (b) the LOD has previously been notified by Holcim that the LOD is not required to perform services on the relevant day; or
- (c) Force Majeure has occurred; or
- (d) the LOD is on leave approved by the Transport Manager.

5.4 Variation of Safety Net Payments

The value of the Annual Earnings Safety Net Payments will be subject to Rise and Fall as set out in Schedule 2.

5.5 Recoupment of Safety Net Payments

Where Holcim has made a Quarterly Safety Net Payment in accordance with the provisions of this clause 5, and the LOD in a subsequent Quarter earns more than one quarter of the Annual Earnings Safety Net Payment, Holcim will have the right to deduct from payments otherwise due to the LOD in the future, the amount of any previous sum paid by Holcim to the LOD by way of a Safety Net payment in accordance with this clause 5, until the full amount of all Annual Earnings Safety Net Payments made by Holcim have been recouped by Holcim. If at the expiry of this Agreement Holcim has not recouped all of the Safety Net Payments made to the LOD over the Initial Term or the Contract Term, the LOD is not obliged to refund the Safety Net Payments made and not recouped.

6. ADDITIONAL PAYMENTS

6.1 Purpose

This clause 6 sets out payments and other benefits that will be made available to the LOD in addition to the payments due under clause 4.

6.2 Mixing in the Yard

A fee as set out in item A of Schedule 3 shall be paid to the LOD where the LOD is required by Holcim to mix and discharge Concrete into a Customer's own vehicle for the Customer to transport away from the Plant. A two (2) metre minimum shall apply.

6.3 Standby Time

- (a) Subject to clause 6.3(b), the LOD shall be entitled to a standby time payment at the rate specified in item B of Schedule 3 where Holcim requests the LOD to remain at a Plant for the purpose of taking a delivery to a customer at a time outside Holcim's Normal Trading Hours. The LOD will be entitled to the standby time payment whether or not the delivery is ultimately required.
- (b) Notwithstanding clause 6.3(a), the LOD will not be entitled to the standby time payment if the LOD is required to wait for less than one (1) hour outside Holcim's Normal Trading Hours.

6.4 Adjacent Transport

Where an LOD is required to cart concrete either:

- (a) within the confines of a Plant owned and/or operated by Holcim; or
- (b) to a location immediately adjacent to and within a one (1) kilometre radius of a Plant owned and or operated by Holcim,

then the LOD shall only receive the load fee specified in item I of Schedule 3.

A three (3) metre minimum shall apply.

6.5 Living Away From Home Allowance

- (a) Where an LOD is required by Holcim to work from a location, which precludes the Driver from returning to his normal place of residence, Holcim will pay to the LOD:

- i. the Driver's reasonable costs for accommodation as nominated by Holcim; and
- ii. breakfast costs,

for each night required, for a period of one (1) week or such longer period as may be agreed.

- (b) Following the expiration of the first week, if the transfer is for a longer period, the LOD will be responsible for arranging the Driver's accommodation and for paying for all of his or her accommodation and meals.

6.6 Road and Bridge Tolls

- (a) Where payment of a road or bridge toll is required for either or both the outward and return journeys by the shortest practicable route, Holcim will issue the LOD with a mutually agreed number of pre-paid toll tickets, electronic tag or equivalent cash money for that load, or a toll card free of charge.

- (b) Any pre-paid toll tickets, toll card, equivalent cash money, or electronic tag issued by Holcim to the LOD, remains the property of Holcim and must only be used by the LOD during the transportation or delivery of pre-mixed concrete or other materials as directed by Holcim and not for any other use, and must be returned to Holcim on termination or expiration of this Agreement (or earlier upon request by Holcim).

6.7 Special Rates

- (a) To cater for special or unique circumstances, Holcim may propose to the LOD that a special rate structure should apply.
- (b) In order to be effective, the special rate structure must be in writing signed by the LOD and their nominated representative/s and a representative of Holcim and will, to the extent of any inconsistency, prevail over the cartage rates specified by this Agreement.

6.8 Unloaded Kilometres

- (a) Unloaded kilometres travelled by the LOD's Concrete Truck at Holcim's request to relocate from the Home Plant to another Plant to load will attract a payment at the rate specified in item C of Schedule 3 for the relocating trip only.
- (b) Despite clause 6.8(a), in the case of a journey where the LOD's Concrete Truck is transferred to another Plant to load via a customer site with concrete for that customer, the LOD will only be entitled to a kilometre payment in item C of Schedule 3 for the kilometres in excess of the kilometres that are already paid and are contained within the delivery rate paid for the delivery of the concrete to the customer site.
- (c) Subsequent journeys are treated as separate journeys and will attract a payment at the rate specified in item C of Schedule 3.
- (d) Despite clause 6.8(c), in the case of a journey where a load has been dispatched to a customer and the LOD is directed to return to its Home Plant or to another plant to load from that customer's site, the LOD will only be entitled to a kilometre payment in item C of Schedule 3 for the kilometres in excess of the kilometres that are already paid and are contained within the delivery rate paid for the delivery of the concrete to the customer site.

6.9 Multiple Discharge Points

- (a) The payment of cartage for a delivery of a load to the same customer at multiple discharge points will be based on the total distance travelled from the Plant where loaded to the final discharge point for that customer. Payment will be as if the quantity of concrete originally loaded at the Plant was carried for the entire distance.
- (b) The payment for cartage of one (1) load for delivery to more than one (1) customer at different discharge points will be treated for the payment of cartage as if separate delivery had been made from the Plant where loaded to each delivery point.

6.10 Diverted Loads

- (a) Where a load is diverted on route to a delivery site, the LOD will be paid a cartage rate covering the total distance travelled from initial departure from the Plant where loaded, to the final delivery point of the load.
- (b) Where a load is diverted by having the Concrete Truck return to the Plant where the load was first dispatched, before being dispatched to another delivery site, the LOD will be paid one (1) load fee and the cartage rate for the distance travelled from the Plant from which the load was first dispatched.

6.11 Returned Concrete and Dumped Concrete

- (a) All Returned Concrete remains the property of Holcim. Holcim may direct the LOD as to where Returned Concrete is to be taken or if and where it is to be dumped. The LOD is to contact dispatch for instructions as to where Returned Concrete is to be taken as soon as possible after a customer advises that it does not require the Returned Concrete.
- (b) Where Returned Concrete is dispatched to another Holcim site, the LOD will be paid the running cost paid rate per Schedule 2 for the original load quantity designated on the delivery docket for the distance travelled from the original delivery site to and from the alternative Holcim site and return to the Plant by the shortest practical route. Waiting time referred to in clause 6.14(g) applies once the LOD's truck has arrived at the redirected site other than an external dump site.
- (c) Where Returned Concrete is dispatched to an external dump site by Holcim, the LOD will be paid:
 - i. the running cost paid rate per Schedule 2 for the original quantity designated on the delivery docket for the distance travelled from the original delivery site to the dump point and return to the Plant by the shortest practical route; and
 - ii. if the LOD provides Holcim with a weighbridge ticket from the dump site, the LOD will receive the surcharge as specified in Item N of Schedule 3 (being fifteen (15) minutes of Waiting Time).
- (d) No payment will be made to the LOD when Returned Concrete is dumped within one (1) kilometre of the delivery site at which the concrete became Returned Concrete,
- (e) if the Returned Concrete is dumped at the plant from where the truck was loaded. A 3 m³ minimum will apply.

- (f) Should the delivery docket not be signed by the customer for the Returned Concrete charged by the LOD or the LOD's driver or should the customer or the customer's representative not be available to sign the delivery docket, or not wish to sign the delivery docket, and the LOD or the LOD's driver fails to contact the Customer Service Centre and fails to write the Control Number supplied by the Customer Service Centre on the delivery docket, the LOD will not be paid for Returned Concrete.
- (g) Holcim will meet all dump costs for concrete, which is dumped at Holcim's direction.

6.12 Deliveries Outside Holcim's Normal Trading Hours

Where the LOD is required to deliver a load of Concrete outside of Holcim's Normal Trading Hours, the LOD shall be entitled to a surcharge in addition to the normal cartage rate payable to the LOD as specified in items D, E and H of Schedule 3 which shall be paid on a cubic metre basis and on the assumption that each load is a minimum of three (3) cubic metres, including situations where the load is being delivered as part of a continuous pour commenced within Holcim's Normal Trading Hours.

6.13 Call Out

Where the LOD is called back outside Holcim's Normal Trading Hours, the LOD shall be entitled to a Call Out payment at the rate specified in item K of Schedule 3.

6.14 Waiting Time

- (a) Waiting time will be paid at the rate specified in item J of Schedule 3.
- (b) The LOD must ensure that all copies of the delivery docket where Waiting time is claimed by the LOD or his driver are signed by the customer in the appropriate section of the delivery docket. The signature must be legible and the customer must print his name beside his signature.
- (c) Should the customer or customer's representative not be available to sign the delivery docket, or not wish to sign the docket, the LOD or the LOD's driver must contact the Customer Service Centre prior to leaving the customer's site. The Customer Service Centre will issue the LOD or the LOD's driver with a Control Number which must be written by the LOD or the LOD's driver in the space provided for the customer's signature on the delivery docket. The Control Number must appear on all copies of the delivery docket.
- (d) Should the delivery docket not be signed by the customer for the Waiting Time charged by the LOD or the LOD's driver or should the customer or the customer's representative not be available to sign the delivery docket, or not wish to sign the delivery docket, and the LOD or the LOD's driver fails to contact the Customer Service Centre or fails to write the Control Number supplied by the Customer Service Centre on the delivery docket, the LOD will not be paid Waiting Time.
- (e) All Waiting Time charged by the LOD or the LOD's driver will be subject to verification by Holcim. Holcim will use the GPS status data transmitted by the LOD's truck to verify the time the LOD's truck was on the delivery site. Should the Waiting Time claim be found not to be in accordance with Item J of Schedule 3, and does not comply with paragraphs (f), (g), (h) and (i) of this clause, the LOD will not be paid for the claim.
- (f) No waiting time will be payable for the first 30 minutes of any delivery.
- (g) Allowable Waiting Time per delivery starts following the greater of

- i. 30 minutes, or,
- ii. 7 minutes per metre or part thereof.

Note: 30 minutes is the minimum time

- (h) A 15 minute grace period will apply. Upon the grace period being exceeded, Waiting Time is payable subject to paragraph (g) of this clause
- (i) Waiting Time:
 - i. starts when the LOD's Concrete Truck is on site or when the LOD's Concrete Truck is on or near the site and is available to the customer to unload on request, whichever is the earliest; and
 - ii. finishes when the LOD's Concrete Truck finishes discharging the total load or the customer releases the Concrete Truck before the total load is discharged.
- (j) When the Concrete Truck is required by Holcim or the customer to proceed to an environmental wash or other such facility designed for that purpose, Waiting Time will not cease until the Concrete Truck is fit to proceed onto a public road. In this case, the LOD, or the LOD's driver, must obtain a Control Number from the Call Centre, whether or not a signature has been obtained pursuant to paragraph (b) of this clause.

7. CARTAGE ACCOUNTS AND PAYMENT

7.1 Holcim to Prepare

Holcim will prepare cartage accounts forming part of a Recipient Created Tax Invoice (RCTI) in accordance with dockets issued by Holcim to the LOD, when undertaking deliveries, during the course of the Accounting Period. The RCTI will be submitted to the LOD.

7.2 Total at End of Accounting Period

All items on cartage accounts will be totalled individually at the conclusion of the Accounting Period. The gross cartage payment will be shown. Any agreed deductions will be fully itemised. The net amount payable for the Accounting Period will also be shown.

7.3 Payment

- (a) Holcim will pay all amounts due to the LOD in respect of the cartage accounts by electronic transfer to the LOD's nominated bank account within ten (10) Business Days following the end of each Accounting Period.
- (b) The LOD will ensure that the bank account that it nominates for Holcim to deposit funds into under this Agreement is a bank account belonging to the LOD and not any other entity.
- (c) Any overpayment made by Holcim to the LOD must be refunded in full within twenty eight (28) days, once the LOD becomes aware of the overpayment. At Holcim's discretion, the LOD may be required to pay to Holcim the amount of any interest earned by the LOD on the overpayment. The amount of interest payable must be paid to Holcim at the same time as the refund of the overpaid amount.

- (d) If the LOD fails to pay back to Holcim the amount of any overpayment and interest in accordance with clause 7.3(c), Holcim can, in addition to any other rights it may have in relation to the overpayment, deduct from the LOD's future payments, an amount equal to the overpayment plus interest at the rate charged at the relevant time by the Australia & New Zealand Banking Group on overdrafts of greater than \$100,000.00.

7.4 Account Discrepancies

- (a) Where the LOD forms the view that the calculation of payments due to the LOD contains an error, the LOD must advise Holcim in writing of the nature of the error and the value of the error within thirty (30) days of receipt of the monthly remittance. The Parties shall use their best endeavours to resolve the issue within thirty (30) days from the date of notification of the possible error.
- (b) If the Parties agree that an additional payment is due to the LOD, that payment will be made in the Accounting Period following agreement on the amount.
- (c) Where Holcim reasonably determines that the LOD has been overpaid, the amount of overpayment will be deducted from the next payment due to the LOD or, where the Agreement has terminated, the LOD must reimburse Holcim within thirty (30) days of the date of notification of the overpayment.
- (d) Where the LOD claims that a discrepancy exists in relation to payments due to the LOD, the LOD must provide a copy of the delivery docket(s) relating to the discrepancy, and the relevant docket(s) must be properly signed in accordance with the procedure in clause 19.

7.5 Deductions for Fuel Expenses

If the LOD purchases fuel from time to time from Holcim, Holcim will deduct from the cartage payment next due to the LOD, an amount equal to the value of any fuel purchased from Holcim or, where this Agreement has been terminated, the LOD must reimburse Holcim within thirty (30) days of the date of purchase.

8. GST

- (a) In this clause:
 - i. GST Act means A New Tax System (Goods and Services Tax) Act 1999 and any related legislation;
 - ii. Representative means a representative member of a GST group to which the relevant supplier belongs; and
 - iii. the expressions "adjustment note", "consideration", "GST", "input tax credit", "supply", "tax invoice", "recipient", "recipient created tax invoice" and "taxable supply" have the meaning given to those expressions in the GST Act.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- (c) Despite any other provision in this Agreement, if GST is imposed on any supply made under this Agreement, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.

- (d) The recipient must pay the amount referred to in clause 8(c) in addition to and at the same time as payment for the taxable supply is required to be made under this Agreement.
- (e) If the amount of GST paid or payable by the supplier on any supply made under this Agreement differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case may be.
- (f) If this Agreement requires a Party to reimburse or indemnify the other Party for any expense, loss or outgoings ("reimbursable expense") the amount required to be reimbursed or indemnified by the first Party will be the amount of the reimbursable expenses net of input tax credits (if any) to which the other Party is entitled in respect of the reimbursable expense ("net amount") provided that should the reimbursement or indemnity be subject to GST, the net amount shall be increased in accordance with clause 8(c).
- (g) Subject to clause 8(k) a valid tax invoice or adjustment note must be delivered by a supplier to the recipient before the supplier is entitled to payment of an amount under clause 8(c). The recipient can withhold payment of the amount until the supplier provides a valid tax invoice or adjustment note as appropriate.
- (h) Holcim is authorised to withhold from payments to the LOD, a Subcontractor or other worker such amounts as are required under the Pay As You Go (PAYG) system.
- (i) If this Agreement requires the calculation of a price by the addition of a percentage margin to another rate or price, the percentage shall be applied to the rate or price exclusive of GST (or where the rate is expressed as being GST inclusive, then less any input tax credit the supplier is entitled to claim in respect of that item) provided that should the margin be subject to GST, the net amount shall be increased in accordance with clause 8(c).
- (j) In the event that liability for payment of GST in respect of a supply under this Agreement is imposed upon a Representative of a supplier, this clause 8 shall nonetheless apply and any amounts to be calculated pursuant to clauses 8(c) and 8(e) shall be calculated in all respects as if, the supplier was liable for the GST imposed on such supply and entitled to input tax credits properly allocated to the making of that supply.
- (k) Holcim will issue a recipient created tax invoice in respect of any supply made by the LOD to Holcim under this Agreement.
- (l) The LOD will not issue tax invoices in respect of those supplies referred to in clause 8(k).
- (m) The LOD acknowledges that it is registered for GST at the time of the signing of this Agreement and that its Australian Business Number is as set out in item 1 of Schedule 1. The LOD must hold GST registration for the whole of the Initial Term and the Contract Term (where applicable).
- (n) The LOD will notify Holcim immediately if it ceases to be registered for GST.
- (o) Holcim acknowledges that it is registered for GST and will notify the LOD if it ceases to be registered for GST or if it ceases to satisfy any one of the requirements which enables it to issue a recipient created tax invoice.

9. TERMINATION OF AGREEMENT

9.1 Termination by Holcim Without Compensation

Holcim may terminate the cartage agreement of an LOD granted by this Agreement immediately and without compensation to the LOD:

- (a) where the LOD is in breach of any of its obligations under this Agreement and fails to remedy that breach within fourteen (14) days of a written notice from Holcim to the LOD, identifying the breach and requiring remedy of it;
- (b) if the LOD suffers an Insolvency Event;
- (c) if the LOD fails to comply with the conditions contained in clause 2;
- (d) if the LOD is in persistent breach of its obligations under this Agreement;
- (e) in the event of persistent serious performance failures notified to the LOD by Holcim;
- (f) in the event of serious or persistent safety or environmental breaches by the LOD or its Driver(s), and notified to the LOD by Holcim;
- (g) if the LOD's Concrete Truck is used for the transportation of materials other than products specified by Holcim, without the prior written consent of Holcim;
- (h) if the LOD or any employee or Subcontractor of the LOD or any Subcontractor's employee is in serious breach of the Fairness and Respect policy in Schedule 6;
- (i) in the event of a fundamental breach by the LOD, or its Driver, of this Agreement, including, but not limited to:
 - i. serious and wilful misconduct (including, theft, violence or violent threats and fraud);
 - ii. falsification of documents;
 - iii. disclosure of confidential information;
 - iv. dishonesty or negligence;
 - v. conviction of, or charge with any criminal offence;
 - vi. being unfit for performance under this Agreement due to the use or presence of intoxicating drugs or alcohol;
- (j) if the LOD or the Driver engage in conduct that may, in the reasonable opinion of Holcim, cause injury to Holcim's business or reputation;
- (k) if there is a purported assignment by the LOD of its rights or obligations without the prior written consent of Holcim, including where the assignment of rights or obligations is deemed to occur in accordance with clause 45.3.

9.2 Termination by Holcim With Compensation

Holcim may terminate this Agreement without cause in the following manner, and subject to the following conditions set out in this clause 9.2:

- (a) In the event of termination under this clause Holcim shall give to the LOD three (3) months' notice which may be worked or paid wholly or partly in lieu, Holcim's discretion.
- (b) At the end of the notice period (or upon payment of the in lieu portion) described in clause 9.2(a), Holcim shall pay to the LOD a compensation payment calculated in accordance with the following scales as applicable (unless the LOD has been offered a suitable alternative engagement by Holcim and refused such offer in which case no compensation payment will be made).

Scale 1: LOD without self-owned Agitator

Year of termination from the Initial Commencement Date	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th
\$amount payable if LOD is operating an 8 Wheeler Truck	\$45K	\$38K	\$33K	\$28K	\$24K	\$20K	\$17K	\$15K	\$13K	\$11K
\$amount payable if the LOD is operating a 6 Wheeler Truck	\$41K	\$35K	\$30K	\$25K	\$22K	\$18K	\$16K	\$13K	\$11K	\$10K

Scale 2: LOD with self-owned Agitator

Year of termination from the Initial Commencement Date	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th
\$amount payable if LOD is operating an 8 Wheeler Truck	\$58K	\$49K	\$42K	\$36K	\$30K	\$26K	\$22K	\$19K	\$16K	\$14K
\$amount payable if the LOD is operating a 6 Wheeler Truck	\$53K	\$45K	\$39K	\$33K	\$28K	\$24K	\$20K	\$17K	\$15K	\$13K

- (c) The LOD acknowledges that Holcim is not liable to pay the LOD any amount for goodwill in relation to a termination of this Agreement by Holcim or otherwise. The LOD also acknowledges that its rights to compensation are governed by the express terms of this Agreement and releases Holcim from any claim in relation to goodwill.
- (d) Holcim acknowledges that the compensation provided under this Agreement is exclusive of and shall not be set off against any entitlement under the Transport Industry Redundancy (State) Contract Determination.

9.3 Termination by LOD

At any time during the Initial Term or the Contract Term, the LOD may terminate the cartage contract by providing Holcim with a minimum of three (3) months' notice.

10. SUSPENSION

10.1 Rights of suspension

Holcim may suspend the allocation of work to the LOD on such terms and conditions as Holcim may determine if:

- (a) in Holcim's reasonable opinion, the LOD's Concrete Truck is not in a safe or roadworthy condition;
- (b) in Holcim's reasonable opinion it is appropriate to do so pending the carrying out of any repairs, maintenance, inspection or testing of the LOD's Concrete Truck;
- (c) Holcim deems it necessary to do so in order to investigate a suspected breach of this Agreement by either the LOD or the LOD's driver; or
- (d) in Holcim's reasonable opinion it is appropriate to do so to ensure the safety of the LOD or the LOD's driver, employees, contractors and/or customers of Holcim, and the safety of the general public.

10.2 Effect of suspension

- (a) Any period of suspension under this provision will be treated as a period of Unavailability.
- (b) Where the LOD is suspended pursuant to clause 10.1(a) or clause 10.1(b), clause 15.3(b) shall apply if the Concrete Truck is found not to be defective.
- (c) Where the LOD is suspended pursuant to clause 10.1(c) or clause 10.1(d), the LOD shall be paid demurrage as per item G of Schedule 3 for the period of the suspension.
- (d) Where an LOD is suspended in accordance with clause 10.1(c), the LOD will receive an additional payment above the payment prescribed in clause 10.2(c) up to the average earning of the LOD's vehicle category in their Home Plant if the LOD is found not to be at fault.

11. APPOINTMENT AS INDEPENDENT CONTRACTOR

11.1 Engagement

The LOD acknowledges that it enters into this Agreement as an Independent Contractor to Holcim for the purpose of delivering pre mixed concrete and other designated materials to customers of Holcim.

11.2 No Agency

- (a) This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties. The LOD has no right or authority to assume or create any obligations of any kind or to make any representations or warranties on behalf of Holcim or to represent that it is an employee, servant or agent of Holcim.
- (b) The LOD also agrees to ensure that its employees and permitted Subcontractors abide by the intention of this clause 11.2 and will indemnify Holcim for any loss or damage incurred or suffered by Holcim by reason of a breach of this clause 11.2 by the LOD, its employees or permitted Subcontractors.

11.3 LOD's Employees and Subcontractors

The LOD is at all times and will remain, responsible for all employment costs including wages, salaries, fees for service, sick leave, annual leave, long service leave, superannuation, worker's compensation insurance and other entitlements of all persons employed or otherwise engaged by the LOD in connection with the performance of this Agreement and for all payroll and other taxes payable in respect of those persons.

11.4 LOD to Supply Concrete Truck

The LOD is responsible for providing the Concrete Truck necessary to provide the services required pursuant to this Agreement. Subject to clause 17, this obligation may include the obligation to provide the Agitator for the Concrete Truck.

11.5 Level of Earnings

The LOD acknowledges that the LOD's level of earnings under this Agreement is influenced by many factors including:

- (a) the level of demand for Holcim concrete from Holcim's customers; and
- (b) the LOD's efficiency and availability.

The LOD further acknowledges that the LOD may earn more or less than other LODs engaged by Holcim.

11.6 Guaranteed Minimum Earnings

Subject to clause 5, the guaranteed minimum earnings under this Agreement are the sum of the Current Annual Earnings Safety Net SCH 2 Truck and SCH 2 Mixer of the True Cost Formula relating to the vehicle configuration of the LODs vehicle or as adjusted pursuant to clause 4.5 of this agreement.

12. LOADING AND ROSTERING

12.1 Holcim to Nominate Load

Holcim has the right to nominate the load size for each load to be carried from a Plant.

12.2 LOD to Carry Load

The LOD must carry any concrete load nominated by Holcim unless that load exceeds the Load Capacity of the LOD's Concrete Truck in which case the load must be rejected by the LOD.

12.3 Rostering

(a) Subject to clause 12.2, Holcim may determine:

- i. A Cyclic Start Roster. The LOD must contact the Holcim Representative at the end of each Working Day to ascertain the LOD's starting time for the following Working Day in accordance with that Cyclic Start Roster; and
- ii. A Roster Off roster listing Concrete Trucks on a rotational basis so that Concrete Trucks not required for particular Working Days, or part thereof, may be rostered off by Holcim. However, it is acknowledged that the LOD may elect to have its Concrete Truck remain at a Plant with the possibility of receiving further loads on a particular Working Day even though Holcim has informed the LOD that its Concrete Truck is not required and is Rostered Off for that day.

(b) Holcim owned vehicles will be excluded from the Roster Off roster in so far as the finish time of the Holcim truck will not disadvantage other trucks.

12.4 Loading Order

(a) Subject to the provisions of this clause 12, Holcim shall use its reasonable endeavours to load Concrete Trucks (operated by LODs, any other contractors (both permanent or casual and by Holcim) having regard to the following:

- i. at the start of each Working Day, in accordance with the Cyclic Start Roster; and
- ii. during the Working Day, after each Concrete Truck has received its initial load, in accordance with the order (or estimated order) of return to that Plant by Concrete Trucks of all Configurations.

(b) Notwithstanding clause 12.4(a), Holcim may change the loading order at each Plant by varying the Cyclic Start Roster or loading order (including by advancing Concrete Trucks in the loading queue with different Configurations to the Concrete Truck otherwise next in line for loading) in its absolute discretion, for reasons including:

- i. if the next load (or loads) required to be taken is (or are) greater than the Load Capacity of the Concrete Truck next in line;
- ii. for the purpose of meeting fatigue management requirements;
- iii. trucks carrying returned concrete;
- iv. Mini loads; and

- v. Specialist vehicles (eg vehicles carrying a catalytic converter).

13. TRUCK TRANSFERS

13.1 Transfer within Operational Area

Holcim may, from time to time, transfer the LOD's Concrete Truck from one Plant to another Plant within the Operational Area:

- (a) in its absolute discretion, including for, in Holcim's opinion, satisfaction of Customer Service Levels or Operational Requirements;
- (b) for such period/s as Holcim determines; and
- (c) by giving the LOD seven (7) days' written notice (unless otherwise agreed) if the transfer is to be for a period greater than seven (7) Working Days, otherwise no notice is required.

13.2 Transfer Rosters

- (a) Holcim will maintain cyclic transfer rosters in its concrete business which rosters will cover trucks and will specify the order in which Holcim requires the Concrete Trucks to transfer from one Plant to another Plant on a daily, weekly or monthly basis in accordance with clause 13.1.
- (b) The transfer rosters referred to in clause 13.2(a) will apply to and include company owned trucks and other fleet vehicles.

13.3 Transfers Outside Operational Area

If Holcim requires the transfer of a Concrete Truck from one Plant to another Plant outside that truck's current Operational Area, Holcim:

- (a) may call for LODs and other contractors to volunteer to transfer their truck;
- (b) may select from any volunteers in its absolute discretion; and
- (c) may, if there are insufficient volunteers, direct an LOD or LODs, to perform the transfer on the basis that where such direction is given, the transfer may not exceed four (4) weeks in duration.

Further, if it is unreasonable for the usual Driver to drive home at the end of each Working Day, due to the distance of that Plant from the Driver's home, the LOD is entitled to receive a Living Away From Home Allowance in accordance with clause 6.5 to be paid to the Driver.

13.4 Disputes

If the LOD wishes to dispute a proposed transfer, the LOD:

- (a) must transfer its Concrete Truck and Driver to the Plant nominated by Holcim in accordance with this clause 13; and
- (b) may dispute the transfer in accordance with the dispute resolution procedures set out in clause 39 this Agreement provided that unless and until there is a resolution of the dispute in the LOD's favour, the Concrete Truck and Driver continue to operate from that nominated Plant.

14. FLEET SIZE AND VEHICLES

14.1 Fleet size

Holcim shall have the absolute discretion to vary the size and Configuration of the fleet of concrete delivery vehicles in any manner and for any reason, including, without limitation, by varying the number of Holcim owned vehicles (including the operation of any plant utilising all company owned vehicles) or the carrying capacity or Configuration of vehicles (whether owned by Holcim or by Contractors) that Holcim uses to service its customers' requirements provided however that nothing in this clause gives Holcim the right to direct an LOD to change the carrying capacity or configuration of the LOD's vehicle without the consent of the LOD.

14.2 Vehicles

Holcim has the absolute right and discretion to nominate the configuration of any vehicle introduced by an LOD to the fleet. In particular, Holcim has the discretion to decide the number and location of 10 Wheeler, 8 Wheeler and 6 Wheeler vehicles in the fleet.

15. AVAILABILITY AND SUITABLE TRUCK

15.1 Obligation

The LOD is obliged to provide a manned and serviceable Concrete Truck for the provision of cartage services for Holcim in accordance with this Agreement on each Working Day during the Initial Term, and where applicable, during the Contract Term.

15.2 Criteria

- (a) No Concrete Truck shall be brought into service by the LOD for the purposes of this Agreement without the prior written consent of Holcim.
- (b) The LOD's Concrete Truck must be capable of taking and adequately powered to take, a hydraulic Agitator powered from a rear mounted power take-off unit. Where Holcim provides the Agitator, the LOD's responsibility under this clause will be to provide an accessible bare power take-off shaft. However, any modification to an already approved Concrete Truck from the Power Take Off (PTO) to accommodate the hydraulic drive connection to the Agitator shall be at Holcim's cost.

15.3 No Loading

- (a) Holcim may, without liability, refuse to load the LOD's Concrete Truck if that Concrete Truck is unregistered, uninsured or, in Holcim's reasonable opinion, defective so as to render its operation unsafe.
- (b) Where Holcim has not loaded a Concrete Truck on the basis that it is defective, and the Concrete Truck is subsequently shown not to be defective by a relevant State authority, the LOD will be paid by Holcim, a cartage rate equivalent to the daily average earnings, at the applicable Utilisation Cartage Rate for the LOD's Utilisation Group for each day or part thereof for which loading was refused, together with any additional statutory charges that the LOD can establish it incurred.

15.4 Repairs

An unserviceable or defective Concrete Truck must, as soon as practicable, be repaired and returned to the Plant to which the Concrete Truck is assigned. The Concrete Truck's

place in the loading order when it returns to the Plant fully repaired, will be in accordance with clause 12 as if the Concrete Truck had returned from delivery of a load of concrete.

15.5 Notification of Absence

- (a) Where the LOD is unavailable to perform services under this Agreement, the LOD shall arrange for the Holcim Representative at the Plant to which the Concrete Truck is rostered to be informed at the earliest possible time of the reason and the anticipated period of absence.
- (b) If the LOD's Concrete Truck is available to perform services under this Agreement less than 95% of the Working Days in any three (3) consecutive Quarters or, less than 25% of the Working Days in any single Quarter, then the LOD will be in breach of this Agreement. A breach as described in this clause gives Holcim the right to terminate the LOD's engagement without compensation.

For the purposes of this clause 15.5(b), the LOD's Concrete Truck will be deemed to be unavailable to perform services on a Working Day if:

- i. the Concrete Truck and the Agitator are unavailable to load and mix concrete at the starting time and Plant designated by Holcim in accordance with the provisions of this Agreement; or
- ii. the Concrete Truck and Agitator are not continuously available once work has commenced on a particular Working Day until the Concrete Truck and Agitator are no longer required by Holcim on that Working Day; or
- iii. the Concrete Truck is not available for more than two (2) hours once work has commenced due to genuine breakdown or mechanical failure provided further that the LOD must have completed the first load of the day in order to have the benefit of the two (2) hour period.

15.6 Road Worthiness

- (a) The LOD must provide to Holcim's Representative at least two (2) weeks' notice of the date on which the LOD's Concrete Truck is to be inspected by the relevant State Authority or approved inspection centre for road worthiness.
- (b) The LOD must at its own expense, obtain and supply to Holcim an annual roadworthy certificate for the LOD's Concrete Truck.

15.7 Minimum Capacity and Configuration

The LOD must provide a suitable Concrete Truck with a minimum Load Capacity of either 5.4m³ for a 6 wheel vehicle, 7.0m³ for an 8 wheel vehicle or 7.8 m³ for a 10 wheel vehicle.

15.8 Warranty

The LOD warrants and agrees that it or its Subcontractor:

- (a) is the registered proprietor(s) or lessee(s) of the Concrete Truck(s) to be utilised for the purposes of providing services pursuant to this Agreement (unless otherwise agreed in writing with Holcim);
- (b) is entitled to possession and use of the Concrete Truck for the purposes of this Agreement; and
- (c) has not modified the Concrete Truck so as to prevent equipment required by Holcim being fitted or so as to invalidate any insurance.

15.9 Cleaning of Truck

- (a) The LOD must ensure the Concrete Truck is kept clean and tidy to the satisfaction of Holcim.
- (b) Holcim may from time to time monitor the presentation and image of the Concrete Truck to ensure that the appropriate standard is maintained.
- (c) Where Holcim considers the presentation of the Concrete Truck is not to an appropriate standard, the LOD will be notified in writing that the Concrete Truck must be cleaned to a standard acceptable to Holcim within four (4) days of the date of the notice. If after the four-day notice period the Concrete Truck remains unacceptable in its presentation to Holcim, Holcim may refuse to load the Concrete Truck until such time as its presentation becomes acceptable to Holcim. Any period during which Holcim refuses to load the LOD's Concrete Truck pursuant to this clause 15.9(c), will be considered a period of unavailability for the purposes of clauses 5.3 and 15.5(b).

15.10 Parking of Truck

- (a) The LOD's Concrete Truck is to be parked only in places approved by Holcim. The LOD is responsible for any loss of or damage, to Holcim's communication equipment and any Holcim supplied Agitator on the Concrete Truck.
- (b) Notwithstanding clause 15.10(a), where the Concrete Truck is parked at a place approved by Holcim, the LOD's liability for any loss or damage to Holcim's communication equipment and any Holcim supplied Agitator on the LOD's Concrete Truck will be limited to that covered by the insurance described in clause 29.
- (c) The LOD is wholly liable for any loss or damage to Holcim's communication equipment and any Holcim supplied Agitator on the LOD's Concrete Truck where the LOD parks the Concrete Truck at a place not approved by Holcim.

15.11 Installation and use of equipment

- (a) The LOD hereby authorises Holcim to fit and/or install a two way radio, speed limiter, tacho graph, GPS or other technology or communication equipment to the LOD's Concrete Truck as required by Holcim. All equipment is to be installed to a professional standard. Such fitting and maintenance will be at the expense of Holcim unless the equipment is deliberately or negligently damaged by the LOD.
- (b) The LOD acknowledges that such technology will be used to monitor the location, performance and compliance of the Concrete Truck and any interference with equipment installed in accordance with clause 15.11(a) may affect the LOD's rates of pay under this Agreement.
- (c) Any equipment installed in accordance with clause 15.11(a), remains at all times the property of Holcim. The LOD will take due care to ensure adequate protection of the equipment from damage and theft.
- (d) All communication equipment is to be operated with care by the LOD in accordance with procedures laid down from time to time by Holcim. Holcim will be responsible for the maintenance of the two way radio and any other communication equipment, which Holcim has installed in the Concrete Truck. The LOD will make the Concrete Truck and the equipment available for the provision of maintenance services at times and places required by Holcim. Any damage to the equipment by the LOD will be repaired by Holcim at the LOD's cost.

- (e) Holcim will provide to the LOD at no cost to the LOD, any and all signage and instructions required to properly operate the equipment installed in the Concrete Truck by Holcim.
- (f) The LOD will be responsible to fit, at the LOD's expense, any items required by any Act or Legislation that that Act or Legislation deems as a requirement to maintain the vehicle in a safe and compliant state.
- (g) From time to time, Holcim may request that additional items be fitted to the LOD's vehicles to enable Holcim to comply with a contract or requirement of a customer/s. In these circumstances, Holcim will negotiate with the LOD (or his appointed representative/s) to determine how the item/s will be fitted and who will bear the cost or a portion of the cost. In the event that the LOD's vehicle is altered to accommodate any additional item/s, and the item/s is removed at Holcim's request, Holcim will negotiate with the LOD (or the LOD's Representative/s) who will bear the cost or a portion of the cost of removal.
- (h) The LOD will make the Concrete Truck available to Holcim for removal by Holcim of the two way radio and other technology or equipment supplied by Holcim upon termination or expiration of this Agreement. Holcim will make good to a reasonable extent any damage caused by the removal. This clause 15.11(h) will survive termination or expiration of the Agreement.

16. MANNING

16.1 Obligation

The LOD must supply a Concrete Truck (as set out in clause 15 of this Agreement) and an approved Driver (approved in accordance with clause 16.3). The obligation includes a requirement to provide a substitute Driver if required. It is expected that unless otherwise approved by Holcim in accordance with this clause, the LOD will be the Driver. Where Holcim becomes aware that the requirements of its business may necessitate extended hours for delivery of concrete or other designated material, it shall provide the LOD with reasonable notice of the extended hours so that the LOD can ensure the LOD meets its obligations under fatigue management legislation.

16.2 Leave

- (a) If the LOD wishes to take leave, the LOD must apply in writing to Holcim detailing the period of and the reason for the leave. The LOD can take leave subject to Holcim's prior written approval. Approval can only be obtained from the Transport Manager.
- (b) Holcim may require the LOD to provide a substitute Driver during any period of leave for the LOD. Any substitute Driver must be approved by Holcim in writing in accordance with this clause 16.3.

16.3 Approval

- (a) The LOD must obtain Holcim's prior written approval, which may be given or refused in Holcim's absolute discretion, for each Driver employed or engaged by the LOD or by any permitted Sub Contractor.
- (b) In considering whether to give such approval, Holcim may take into account, without limitation, any or all of the following matters:
 - i. the person's suitability, presentation and aptitude;

- ii. the person's standard of efficiency as indicated by completion of a required training period specified by Holcim;
 - iii. the results of a pre engagement medical examination and/or a pre engagement occupational safety assessment;
 - iv. satisfactory completion of any assessment, test or course required to be completed by Holcim;
 - v. the person's driver licence history; and
 - vi. the results of a pre-engagement probity check
- (c) Holcim will pay the cost for one (1) pre-engagement medical and one (1) probity check per calendar years. The LOD will bear the cost of any subsequent tests.
- (d) The LOD will be responsible for providing from its proposed Driver any form of consent required by Holcim to receive and review personal information relating to the Driver so as not to place either the LOD or Holcim in breach of relevant privacy legislation.
- (e) Holcim accepts no liability for any loss or damage suffered by the LOD as a result of Holcim refusing to provide its approval for any particular Driver.

16.4 Nominated Driver

The LOD's nominated Driver will not be replaced without the prior written approval of Holcim. A Driver's replacement during periods of absence from the LOD's employment or engagement must also satisfy Holcim in relation to the matters addressed in clause 16.3(b) unless otherwise agreed.

16.5 Compliance with Agreement

- (a) The LOD must ensure that a Driver engaged or employed by the LOD is made aware of the LOD's Service Obligations under this Agreement, and of Holcim's rights under this Agreement, and that the Driver complies with the LOD's Service Obligations under this Agreement, and respects Holcim's rights, as if the Driver was the LOD.
- (b) For the sake of clarity, where this Agreement requires the LOD to perform some obligation or task that in practice is logically to be performed by the LOD's Driver (including the LOD Service Obligations), the LOD will, without diminishing the LOD's primary responsibility for that obligation, procure that the Driver performs the relevant obligation or task. Any failure by the Driver to perform any such obligation or task shall be construed as a failure by the LOD to perform that obligation or task.

16.6 Provision of Documents

The LOD will itself, and will ensure that, the Driver provides to Holcim, on demand, or within such period as may be nominated by Holcim, a true copy of:

- (a) in respect of the Driver, the Driver's current driving licence;
- (b) all certificates of insurance required by this Agreement to be held by the LOD;
- (c) the current registration and roadworthy certificates relating to the Concrete Truck;
- (d) all records relating to fatigue management; and

- (e) all records relating to the maintenance of the vehicle and mixer.

Failure by the LOD or the Driver to comply with this clause 16.6 will entitle Holcim to refuse to load the LOD's Concrete Truck until compliance occurs and, (for the avoidance of doubt) to treat the non-compliance as a breach of this Agreement entitling Holcim to serve a notice of breach in accordance with clause 9.1(a). Any period of non-loading under this clause 16.6, shall be treated as a period of unavailability for the purpose of clauses 5.3 and 15.5(b).

16.7 Immediate Notification

The LOD and the LOD's Driver are to immediately notify Holcim if the Driver is disqualified from driving the Concrete Truck.

17. PROVISION OF AGITATOR

17.1 Provision

The LOD will provide and maintain the Agitator, unless Holcim decides in its absolute discretion to provide and maintain the Agitator. In any event the Agitator must meet the requirements of the relevant Australian Standards as varied or replaced from time to time and the Holcim Transit Mixer specification (which will include a range of approved suppliers of Agitators) as varied or replaced from time to time.

17.2 Fitting of Agitator

- (a) Where Holcim provides the Agitator, Holcim will ensure the safe and proper initial fitting of the Agitator to the Concrete Truck.
- (b) If an Agitator is required to be removed at any time for any reason by Holcim, the total cost of the Agitator's removal and replacement shall be borne by Holcim. If an LOD wishes to remove the Agitator, the costs of removal and replacement will be borne by the LOD.
- (c) After the initial fitting of the Agitator, the LOD will be responsible for the Agitator being properly secured to the Concrete Truck. The LOD will be responsible for all maintenance and replacement of clearance lights, lenses and globes.
- (d) Holcim specified mud flaps must be fitted and will be supplied by Holcim.
- (e) The LOD will be responsible for meeting all costs associated with the repair of accident damage to the Agitator. Repairs must be carried out, within a time frame as required by Holcim, to the satisfaction of Holcim.

17.3 Removal of Agitator

- (a) Where Holcim provides the Agitator, it remains the property of Holcim and on termination or expiration of this Agreement, will be removed by Holcim at a location and time nominated by Holcim within one working day of being terminated.
- (b) The LOD will be paid the amount specified in item C of Schedule 1 to travel to the place nominated by Holcim for removal of the Agitator.
- (c) This clause 17.3 shall survive termination or expiration of this Agreement.
- (d) Any time in excess of one working day after the LOD is terminated, and where the mixer is not removed will attract a daily demurrage claim as per item E of Schedule 3.

17.4 Cleaning of Agitator

- (a) The LOD will thoroughly wash out the Agitator and will keep all external surfaces clean and treated as required by Holcim.
- (b) All cleaning materials and equipment necessary for cleaning of the Agitator will be supplied by Holcim and Holcim will ensure compliance with any and all statutory requirements and regulations relating to the use of these cleaning materials.
- (c) Where Holcim considers the presentation of the Agitator not to be to an appropriate standard, the LOD will be notified in writing that the LOD must within four (4) days bring the Agitator up to a standard acceptable to Holcim. If after four (4) days' notice the Agitator remains in a state that is unacceptable to Holcim, then Holcim may refuse to load the LOD's Concrete Truck until such time as the presentation of the Agitator becomes acceptable to Holcim. Any period during which Holcim is not loading the LOD's Concrete Truck pursuant to this clause 17.4(c), will be considered a period of unavailability for the purposes of clauses 5.3 and 15.5(b).

17.5 Maintenance of Holcim Supplied Agitator

This clause 17.5 applies in circumstances where Holcim has supplied the Agitator.

- (a) Holcim will be responsible for all major maintenance to the Agitator, in accordance with the Agitator manufacturer's recommendations.
- (b) The LOD shall report any and all apparent requirements for maintenance of the Agitator to the Holcim Representative. The LOD will be responsible for all Minor Maintenance as described in written procedures provided by Holcim (to the LOD) from time to time. Subject to clauses 17.2(a), 17.2(b) and 17.2(c) all parts, tools, materials and equipment for maintenance of the Agitator will be supplied by Holcim.
- (c) When required by Holcim, the LOD will convey the Agitator to a workshop for repairs and/or maintenance as requested by Holcim. All work will be completed as soon as possible. Where the LOD is required to convey the Agitator to a workshop for repairs in accordance with this clause, the LOD will be paid an amount as specified in item C of Schedule 3. In such circumstances, Holcim will also provide a means at Holcim's cost for conveying the LOD's Driver to his/her place of residence or the Plant whichever is the lesser distance and return him/her to the workshop as and when required. If the repair is not completed in seven (7) working days the LOD will be entitled to demurrage in accordance with Item E of Schedule 3.

17.6 Agitator Provided by LOD

The provisions of this clause 17.6 apply where the Agitator has been supplied by the LOD.

- (a) Unless otherwise agreed, any Agitator supplied by the LOD must, at the time of supply, be new, unused and with the manufacturer's compliance plate dated not earlier than six (6) months prior to the Commencement Date.
- (b) An Agitator supplied by the LOD will have a rated mixing capacity as designated by Holcim and be strictly in accordance with the Holcim Transit Mixer specification as issued from time to time. The Agitator shall be securely fitted to the Concrete Truck in accordance with the manufacturer's specifications for the Concrete Truck and the Agitator. The LOD will meet all costs associated with provision and fitting of the Agitator.

- (c) The LOD may, with Holcim's prior consent, replace the Agitator with another Agitator of the same configuration which is new at the time of supply, unused and with a manufacturer's compliance plate dated no earlier than six (6) months from the date of Holcim's consent.

17.7 Maintenance of LOD Supplied Agitator

- (a) This clause 17.7 applies where the Agitator has been supplied by the LOD.
- (b) The LOD is responsible for all maintenance associated with the Agitator including the cleaning requirements detailed in clause 17.4 . All maintenance shall be carried out strictly in accordance with the Agitator manufacturer's recommendations and programs and the requirements of Australian Standard 1379 of 2007 (as varied or replaced).
- (c) Holcim shall have the sole right to instruct the LOD to undertake any and all repairs and/or maintenance of the Agitator to ensure Holcim's operational standards as established from time to time are met. Such repairs and maintenance shall be undertaken at the LOD's cost without delay and within the timeframe specified by Holcim.

18. RESPONSIBILITY FOR LOAD

18.1 No Alteration to Docket

The specification of each load of concrete shown on the concrete delivery docket issued by Holcim must not be changed by the LOD after batching.

18.2 Slump

- (a) Before leaving the Plant to deliver a load, the LOD must ensure the load is properly mixed in accordance with the written instructions provided by Holcim, which may be varied from time to time.
- (b) The LOD must ensure that immediately prior to discharge, the Slump of the concrete complies/conforms with the latest issue of Australian Standard AS1379 [as varied] or its replacement, and any work instructions issued by Holcim.

18.3 Change of Ingredients

Holcim will notify the LOD through the use of the plant notice board or any other reasonable method, of any intended major changes to the source of ingredients used in the concrete batched at the Plant that may change the Slump characteristics of the concrete. If Holcim fails to provide such notification of a change in ingredients, Holcim will assume responsibility for Slump and the LOD will be paid for all cartage at the full Utilisation Cartage Rate, without penalty.

18.4 Rejection of Load

- (a) If a load is rejected at a job site because the Slump of the concrete is outside the nominated tolerance described in clause 18.2, or because the LOD had not complied with that clause, the LOD will not be paid for the delivery of the load. In addition the LOD may have deducted from his Holcim cartage payment the total invoiced value of the ingredients used in the Concrete for the load. Holcim will use its best endeavours to ensure that each concrete load provided to the LOD is batched so that the quantity of water required to adjust the Slump does not exceed 10% of the total water required to bring the load up to the specified Slump.

- (b) However, if Holcim has restricted the LOD's ability to adjust the Slump of a load on the job site and:
- i. the LOD is requested by a customer or a customer's representative to adjust the Slump of the load; and
 - ii. Holcim approves such adjustment after discussion with the LOD; and
 - iii. the load is subsequently rejected on the basis of water addition or non-compliance with the nominated Slump tolerance,

then Holcim may pay the LOD the cartage rate for the load as if the load had not been rejected.

- (c) The LOD must ensure that before leaving the plant the load is properly mixed as required by the instructions from Holcim and that the Slump is in accordance with Australian standard AS 1379. Where the LOD is requested by Holcim to adjust or maintain the Slump of a load at a tolerance closer than that specified in the current issue of Australian Standard AS1379 as varied or replaced from time to time, and the load is rejected on the basis of non-compliance with the nominated Slump tolerance, then Holcim will pay to the LOD the Utilisation Cartage Rate for the load as if the load had not been rejected.

- (d) In the case of Kerb Maker loads it is the responsibility of the LOD to carry the load as batched. If the load is out of Slump it will not be the responsibility of the LOD unless the LOD attempted to adjust the Slump.

18.5 Additives

- (a) Subject to the LOD and the Driver's compliance with clause 18.5(b), where Holcim adds an additive to the concrete after the LOD has adjusted the Slump of the load, or where an additive is added at the customer's request, the LOD will no longer be responsible for the Slump of that load.
- (b) The LOD and the Driver are not permitted to add any additives to the concrete.

18.6 Agitator Drum

- (a) The Agitator drum must be kept turning at all times when it contains concrete.
- (b) The LOD is required to maintain the Agitator speed at sixteen (16) revolutions per minute (or as specified by the manufacturer of the Agitator) whilst being loaded and whilst mixing concrete.
- (c) The LOD is required to maintain the Agitator speed at a minimum of one (1) revolution per minute whilst the Concrete Truck is in transit and loaded with concrete.

18.7 Inspection of Loads

- (a) The LOD or the Driver must visually inspect each load prior to leaving the Plant and advise the Holcim Representative at the Plant of any apparent unusual features of the load which may have occurred due to a batching error, equipment failure, contamination or LOD error.
- (b) The LOD will not be responsible for irregularities of the load that cannot be detected by visual inspection performed by the LOD or the LOD's Driver apart from irregularities arising from non-compliance with the obligations in clause 18.2.

18.8 Topped up Loads

- (a) Notwithstanding any other provision of this Agreement, Holcim will assume responsibility for the quality of a load of concrete where:
 - i. Returned Concrete is to be reused and is more than one and a half hours old by the time it is delivered to a new customer; and
 - ii. the quantity of Returned Concrete is greater than 0.8 cubic metres; and
 - iii. the load is topped up with fresh concrete by Holcim at the Plant.
- (b) The LOD will be responsible for any contravention of the legal load limits applicable to the Concrete Truck in relation to topped up loads. Holcim will provide the LOD with the ability to dump any concrete from the topped up load, which would place the LOD in breach of the legal load limit.

18.9 Shortest Route

In delivering concrete to Holcim customers, the LOD shall procure that its Driver takes the shortest lawfully allowable route to and from the Plant. The LOD shall also procure that its Driver follows any directions provided by Holcim in relation to the shortest lawfully allowable route to and from the Plant for particular deliveries.

19. OBLIGATIONS AT DELIVERY

19.1 Signatures for Delivery

- (a) Holcim will issue with each load a delivery docket showing the details of the load to be delivered by the LOD and details to be completed by the LOD at the delivery site. The delivery docket will also have a place for the customer's representative to sign confirming delivery of the Concrete.
- (b) At the job site to which the LOD delivers a load of concrete, the LOD shall procure that its Driver will make every reasonable endeavour to obtain all required signatures on the delivery docket for the load, waiting time, surcharges and addition of water and it is the LOD's responsibility to ensure that each of its Drivers contact dispatch immediately by two way radio when a problem arises with obtaining a signature from the customer as required by Holcim.
- (c) If a signature or signatures from a specific person is or are required by Holcim, Holcim will endeavour to ensure that the nominated person is available at the point of discharge at the time of completion of the discharge of the load.
- (d) If a signature or signatures from the customer or its representative on site at the delivery point cannot be obtained then the LOD's Driver must sign the docket and print his or her name in a legible manner in the appropriate section of the delivery docket as verification that the concrete has been delivered. Failure to complete this process will result in the LOD not being paid the cartage rate for the delivery.
- (e) The LOD is required to return all completed delivery dockets for every load to the Plant from which the delivery was made, or the next Plant from which the LOD next loads, at the time of loading on every Working Day. Where the LOD fails to return completed delivery docket(s), Holcim will not pay the cartage rates for the delivery docket(s) not received by the Holcim Representative at the Plant.
- (f) The LOD and/or the Driver will not falsify any details on a delivery docket. The falsification of any detail on a delivery docket will be regarded as a serious breach of this Agreement, which may result in immediate termination of this Agreement (without compensation) under clause 9.1.

- (g) Holcim may, at its discretion, implement changes in technology where by deliveries of concrete can be made without the use of paper delivery dockets. Prior to implementation of any change of process, Holcim will train all drivers in its application.

19.2 Payment on Delivery

The LOD will direct its Driver to comply with the following requirements:

- (a) The Driver will ensure cash or cheques are collected from those customers designated by Holcim as "cash/cheque on delivery" customers for all concrete charges including waiting time, if applicable. All moneys collected will be submitted in full to the Holcim Representative as soon as possible on return to the Plant. The Holcim Representative will sign the LOD's copy of the delivery docket as recognition of receipt of money.
- (b) The Driver will immediately advise Holcim by two way radio when cash on delivery payment is not collected or a dispute arises between the LOD and the customer.
- (c) The Driver is not required to carry a float for the purposes of providing a change facility.
- (d) The Driver shall take all due care of any money collected until the money is handed to the Holcim Representative at the Plant.
- (e) The Driver is no longer held responsible for the moneys once the Holcim Representative signs the LOD's copy of the delivery docket recognising receipt of moneys in respect of the relevant customer.

19.3 Job Site Entry

- (a) The LOD has the right to refuse to enter a job site, which it reasonably considers unsafe or hazardous.
- (b) The LOD is expected to make an honest and professional assessment of the site before reaching this conclusion.
- (c) The LOD must notify the Holcim Representative at the Plant of the unsafe or hazardous job site and of the LOD's unsuccessful attempt to enter the site. The Holcim Representative will attend the site as soon as practicable after notification in order to determine the action to be taken.
- (d) Provided the LOD has made an honest and professional assessment of the site the LOD will be paid cartage for the load in question.

19.4 Bogged Vehicles

- (a) Where the LOD enters a job site beyond the road kerb line to complete a delivery and the Concrete Truck becomes bogged or is otherwise rendered inoperative as a consequence of such attempted delivery, Holcim will arrange the services of an experienced salvage contractor to extract the Concrete Truck as soon as possible and shall bear all costs for those arrangements including the payment of Waiting Time.
- (b) Holcim will ensure that the salvage contractor selected is covered by the appropriate insurance policy to rectify any damage that the salvage contractor may cause to the Concrete Truck during the extraction process. Holcim accepts no liability for damage or loss caused where the LOD utilises its own salvage contractor for the extraction.

- (c) Clauses 19.4(a) and (b) will not apply where the Concrete Truck becomes bogged or inoperative as a direct result of the LOD's or its Driver's negligence or any deliberate act by the LOD's Driver.

19.5 Damage to Property or Vehicles

The LOD shall be responsible for damage to property or vehicles including the Concrete Truck arising from all deliveries including off kerb deliveries where there is negligence by the LOD or any substitute driver employed by the LOD. If the LOD damages third party property during a delivery including an off kerb delivery and fails to make good that damage or pay appropriate compensation for that damage within a reasonable time, Holcim may itself make good the damage or pay the compensation and deduct the cost thereof from the next payment(s) due to the LOD.

20. DEALINGS WITH CUSTOMERS

The LOD acknowledges that its earnings under this Agreement can be directly affected by the way in which the Driver or any substitute Driver behaves towards Holcim customers. Consequently, the LOD shall ensure that the Driver and any substitute Driver will always:

- (a) interact with customers in a courteous and helpful manner;
- (b) report immediately to Holcim any customer complaint made to the LOD or its Driver(s) (including substitute Drivers);
- (c) wherever possible, comply with reasonable and lawful customer requirements in relation to delivery of concrete to the customer; and
- (d) not do anything which is likely to lead to dissatisfaction on the part of the customer with the service provided by the LOD, or the quality of the concrete delivered.

21. CONFIDENTIALITY

21.1 Confidentiality Security and Reproduction

The LOD agrees to keep confidential, to maintain proper and secure custody of, and not to reproduce in any form, any Confidential Information except as authorised by Holcim, or as required by law. The LOD's obligations under this clause 21 continue after the termination of this Agreement or the LOD's engagement with Holcim.

21.2 Use of Confidential Information

The LOD agrees not to access or use any Confidential Information for any purpose other than the performance of its duties under this Agreement and for the benefit of Holcim.

21.3 Ownership of Confidential Information

The LOD agrees that all Confidential Information is and remains the property of Holcim.

21.4 Delivery of Confidential Information

The LOD must on termination of its engagement with Holcim, or at any other time upon request by Holcim, return to Holcim, all documents or electronically stored records, containing Confidential Information and all modifications to, copies of, or extracts from, such documents or records.

22. SITE CLEANING

22.1 LOD's Obligation

The LOD shall at its own cost, and to the satisfaction of Holcim:

- (a) clean up and remove from roadways, customers' sites and public property, any concrete spillage that occurs during the performance of this Agreement; and
- (b) immediately report to Holcim any spillage of concrete, any necessity to clean up a site or public property and any damage caused by the concrete spillage.

22.2 Reimbursement of Holcim

Where, in Holcim's reasonable opinion, the LOD has not:

- (a) cleaned up the spillage to a standard required by clause 22.1; or
- (b) effected the clean-up in a timely manner; or
- (c) cleaned up and the spillage may cause accident or injury,

then Holcim may itself undertake the clean-up and Holcim may deduct the reasonable costs of doing so from the next payment(s) due to the LOD.

23. BREAKDOWNS

Neither Holcim nor the LOD shall be responsible to each other for any loss resulting from Plant, Agitator or Concrete Truck breakdowns.

24. FUEL AND OIL

- (a) The LOD is responsible for providing the fuel to operate the Concrete Truck including the Agitator.
- (b) Where Holcim provides the Agitator to the LOD, Holcim is responsible for providing oil and grease for operation and lubrication of the Agitator.
- (c) Where the LOD provides the Agitator, the LOD will be responsible for providing, at its own cost, all required oil and grease for operation and lubrication of the Agitator.

25. DE-DAGGING

25.1 LOD Supplied Mixer

- (a) The LOD will be responsible (unless specifically agreed otherwise with Holcim), for the removal of hardened concrete build up from the inside of the Agitator, a process commonly known as "de-dagging".
- (b) All de-dagging will be carried out strictly in accordance with the procedure detailed by Holcim, and in compliance with all provisions of the relevant health and safety legislation.
- (c) The LOD's responsibility will include the provision of the labour, tools and materials required for de-dagging and must be carried out by an approved Concrete Industry de-dagging contractor only.

- (d) Holcim shall have the right to refuse to load a Concrete Truck where de dagging to the satisfaction of Holcim has not been completed.
- (e) Holcim shall have the right to reduce the load size of the LOD's vehicles to ensure that the LOD's vehicle does not exceed its maximum road weight.
- (f) Where the LOD's vehicle load has been reduced, the LOD must have its vehicle de-dagged within 5 working days.

25.2 Holcim Supplied Mixer

- (a) The LOD will be responsible (unless otherwise agreed with Holcim), for the removal of hardened concrete build up from the inside of the Agitator, a process commonly known as "de-dagging".
- (b) All de-dagging will be carried out strictly in accordance with the procedure detailed by Holcim, and in compliance with all provisions of the relevant health and safety legislation.
- (c) The LOD's responsibility will include the provision of the labour, tools and materials required for de-dagging and must be carried out by an approved Holcim de-dagging contractor only.
- (d) Holcim shall have the right to refuse to load a Concrete Truck where de-dagging to the satisfaction of Holcim has not been completed.
- (e) Holcim shall have the right to reduce the load size of the LOD's vehicles to ensure that the LOD's vehicle does not exceed its maximum road weight
- (f) Where the LOD's vehicle load has been reduced, the LOD must have his vehicle de-dagged within 5 working days.

26. PAINTING AND SIGN WRITING

26.1 Painting of Concrete Truck

- (a) Any Concrete Truck supplied by the LOD must be painted in Holcim's corporate livery.
- (b) The LOD shall be responsible for arranging the cab, chassis and wheels of the Concrete Truck to be painted in the correct Holcim corporate livery.
- (c) The LOD shall also be responsible for the costs involved in preparing and painting the Concrete Truck in the correct Holcim corporate livery.

26.2 Painting of Agitator

Where the LOD supplies the Agitator/s, the LOD shall be responsible for arranging and meeting the cost of painting the Agitator/s in Holcim corporate livery excluding the application of the Holcim Logo on the barrel of the agitator. Holcim will arrange an approved contractor to affix the logo template to the agitator barrel at Holcim's cost and the application of specified logo livery.

26.3 Finish

The painting required by this clause 26 is to be undertaken by a recognised truck painting operation approved in advance by Holcim. The standard of finish required is not less than that provided by tradesmen specialising in this field.

26.4 Inspection

Prior to placing the Concrete Truck and the Agitator in service after it has been painted, the LOD shall make the Concrete Truck and the Agitator available to Holcim for inspection of the paint colour and finish. If the paint colour does not meet the Holcim Specification, and/or the finish is not to the satisfaction of Holcim, then Holcim may require the LOD to have the Concrete Truck and or the Agitator repainted.

26.5 Repainting

- (a) The Concrete Truck and any Agitator shall be repainted at the cost of Holcim at a time deemed appropriate by Holcim. The intention of this clause is that it will apply for either an Agitator owned by Holcim or an Agitator owned by the LOD.
- (b) The LOD shall be responsible for the preparation of the cab and chassis of the truck prior to repainting. All major and minor repairs should be completed at the LOD's expense and completed to the satisfaction of Holcim.
- (c) The truck chassis will be sandblasted and undercoat paint applied at Holcim's expense.
- (d) The LOD shall make the truck available at the reasonable request of Holcim and at no cost to Holcim in order for the repainting to be completed.
- (e) If the repainting is not completed within twelve (12) Working Days from when the truck is presented to Holcim by the LOD in accordance with clause (b), the LOD shall be paid demurrage in accordance with item G of Schedule 3 for each additional day.
- (f) Holcim shall bear the cost of removal and replacement of the Agitator in any case where repainting of the Concrete Truck is required. (includes any part required in the removal and replacement of the agitator that needs replacing as part of the process of removing or replacing the agitator)

27. INDEMNITY

27.1 Indemnity

The LOD will indemnify and hold Holcim harmless from and against all losses, claims, actions, demands or proceedings (including any consequential loss and loss of profit and legal costs and disbursements) arising, paid or suffered by Holcim, as a result of or in connection with:

- (a) a breach by the LOD of any of the warranties contained in clauses 28.1 or 29.2;
- (b) the LOD's performance of work under this Agreement (including compliance with the LOD's Service Obligations);
- (c) any wilful or negligent act or omission of the LOD, the Driver and/or the LOD's servants, agents, employees or Subcontractors;
- (d) the destruction or damage to real and/or personal property (including the loss of use) by the LOD, the Driver and/or the LOD's servants, agents, employees or Subcontractors;
- (e) a breach of any provision of this Agreement by the LOD, the Driver and/or the LOD's servants, agents, employees or Subcontractors;

- (f) the LOD's failure to be registered for GST purposes;
- (g) the LOD's failure to hold valid worker's compensation insurance for any of its Drivers;
- (h) any liability of Holcim to pay any tax, superannuation, superannuation guarantee charge or other duty, charge or levy with respect to the LOD's Driver(s) and/or any of the LOD's servants, agents, employees or Subcontractors; and
- (i) the LOD's operations or business.

28. WARRANTIES REGARDING STATUTORY AND OTHER REQUIREMENTS

28.1 Warranties

The LOD warrants that at all times whilst delivering concrete and other designated materials pursuant to this Agreement, the LOD and where applicable, any Driver engaged by the LOD or any permitted Subcontractor, will comply with all laws and regulations relating to:

- (a) the licensing, driving, operation and maintenance of the Concrete Truck;
- (b) the medical condition of the Driver;
- (c) payment of all fees, licences and taxes relating to ownership and operation of the Concrete Truck;
- (d) Federal, State & Territory Occupational Health & Safety;
- (e) Federal, State & Territory Environmental and Pollution control;
- (f) the employment of persons under both the Federal and State jurisdictions, as applicable;
- (g) driving hours and fatigue management;
- (h) all other matters relevant to the provision of the services pursuant to this Agreement including, but not limited to, workers' compensation insurance and superannuation contributions;
- (i) the National Code of Practice for the Construction Industry and the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry and if required by Holcim, evidence of compliance; and
- (j) an Occupational Health and Safety Construction Induction Training Certificate or card.

28.2 Additional Warranties

The LOD further warrants on a continuing basis that:

- (a) the Concrete Truck shall be roadworthy in every respect and, if required by law (in which case it shall be at the LOD's expense) or by Holcim (in which case it will be at Holcim's expense), be fitted with additional speed limiters, tachographs, etc.;
- (b) the LOD will comply with Holcim's requirements and directions in relation to environmental and pollution issues;

- (c) the Driver shall be licensed to drive the Concrete Truck and shall not drive whilst under the influence of drugs or alcohol above the legally prescribed limit;
- (d) the Driver shall observe all speed limits and road traffic directions, drive within prescribed driving hours, and comply with logbook requirements;
- (e) the LOD is a duly established company existing under the laws of Australia and has the power and authority to enter into and perform this Agreement;
- (f) the LOD has the necessary skill and resources to undertake all obligations under this Agreement;
- (g) the LOD will not allow a trainee Driver or substitute Driver to operate the Concrete Truck otherwise than under the supervision of the Driver ordinarily employed or engaged by the LOD, or if that Driver is unavailable, under the supervision of some other suitably qualified and licensed person;
- (h) the LOD will perform its obligations under this Agreement in a professional manner exercising due care, skill and attention; and
- (i) the LOD has provided and disclosed to Holcim all material information necessary for Holcim to make an informed decision as to whether or not the LOD is a fit and proper entity for entering into this Agreement, and that all the information provided to Holcim prior to the execution of this Agreement is accurate and complete.

28.3 Truck and Agitator Tare Weight

- (a) On a quarterly basis, and no less than bi annually, Holcim may require each LOD to provide a copy of a registered weighbridge certificate relating to the Concrete Truck/s.
- (b) The Concrete Truck/s must be weighed with the Driver in the Driver's seat, fuel, oil and water tanks at full capacity and all mixer chutes attached.
- (c) Notwithstanding clause 28.3(a), Holcim has the discretion to require the LOD to weigh the Concrete Truck/s at any time, under Holcim supervision, as part of any program which Holcim has in place for the purposes of ensuring statutory compliance.

28.4 Log Books

The LOD will ensure that its Driver/s maintain, up to date and accurate log books as required under any relevant State and/or Federal Law, and a Holcim supplied Work Diary maintained in accordance with Holcim instructions and the LOD's Driver/s will make these available for inspection by Holcim on demand.

29. INSURANCE

29.1 Insurance

- (a) The LOD must, at its own expense, take out and maintain insurance as specified by Holcim from time to time.
- (b) From the Initial Commencement Date, the LOD must, at its own expense, take out and maintain insurance cover for the matters specified in Schedule 4 of this Agreement.

- (c) The LOD must ensure that Holcim's interests are noted on the insurance policies nominated in Schedule 4.
- (d) If the LOD does not maintain or renew (where necessary) any insurance policy required by this Agreement, it must immediately notify Holcim.

29.2 Compliance

The LOD will not do or cause anything to be done which would breach any insurance policy required by this Agreement or which would have the effect of allowing the insurer to decline cover.

29.3 Provision to Holcim

The LOD must provide Holcim with originals of all insurance policies held and all renewal notices in respect of the insurances to be held pursuant to this Agreement, to allow Holcim to take copies of policies and renewal notices for Holcim's records.

29.4 Notification

The LOD will immediately notify the relevant insurer of any event covered by an insurance policy. Following such notification, the LOD will promptly do all things necessary to pursue the claim.

30. LOD'S EQUIPMENT

30.1 Storage

Subject to Holcim's prior approval, Holcim will provide to the LOD, at the Plant from which the LOD operates (from time to time), sufficient space for the storage of up to two (2) spare tyres for the Concrete Truck. No other equipment is to be stored by the LOD on Holcim premises without the prior written approval of Holcim. Holcim may, in its discretion, remove from its premises, any other LOD equipment that has not been approved or which exceeds the quantity of LOD equipment for which Holcim has given approval for storage, and charge the LOD for removal and/or disposal costs.

30.2 Marking

Any tyres stored by the LOD in accordance with this clause 30 must be marked so identification will match the tyres to a fleet number for the LOD's Concrete Truck. In circumstances where Holcim cannot identify ownership of stored equipment, Holcim has the right to remove the unidentified equipment and to dispose of it appropriately.

30.3 No Liability

Holcim will not be liable to the LOD for any loss or damage to the LOD's equipment stored at a Plant or other Holcim premises.

30.4 Storage of other items

The LOD will not store any other items, including, but not limited to parts and lubricants. Ad Blue, or other fuels or fluids required for the daily operation of delivery vehicles may be stored.

31. EMERGENCIES AND INCIDENTS

31.1 LOD to Follow Holcim Procedures

The LOD will, and will ensure that its Driver will, comply with the emergency procedures specified by Holcim from time to time.

31.2 Reporting Incidents

The LOD shall immediately advise Holcim of any incident, including any near miss, whether or not involving injury to people or damage to property, or an accident involving the delivery of concrete or the Concrete Truck, by contacting the Holcim Representative at the Plant from which the LOD is working on the day of the incident.

31.3 Investigation

The LOD will provide all necessary assistance to Holcim in relation to any Holcim investigation of an incident of the kind referred to in clause 31.2.

31.4 Reporting Defects, Loss or Theft

An LOD will report to Holcim immediately, in writing, any damage, defect, loss or theft that has occurred during the LOD's compliance with this Agreement or otherwise relating, Holcim, its property, Plant or equipment.

32. STAMP DUTY

- (a) The LOD is liable for, and must pay, any stamp duty (including any fine or penalty except where it arises from a default by Holcim) on or relating to this Agreement, any document executed under it, or any dutiable transaction evidenced or effected by it.
- (b) If Holcim pays any stamp duty (including any fine or penalty) on or relating to this Agreement, any document executed under it, or any dutiable transaction evidenced or effected by it, the LOD must pay that amount to Holcim on demand.

33. LEGISLATION AND POLICIES

- (a) The LOD agrees to ensure that it, and any of its Drivers or Subcontractors comply with all relevant legislation and any policies prepared by Holcim from time to time.
- (b) The LOD acknowledges that despite the compliance required by clause 33(a), any such policies and legislation, do not form a part of, and are not incorporated into, this Agreement.

34. COMPLIANCE WITH POLICIES

34.1 Obligation

The LOD will comply, and will ensure that its Driver(s) complies, with the Fairness and Respect Statement set out into this Agreement. Failure to comply with may result in immediate termination of this Agreement.

34.2 Operational Procedures

Holcim will provide the LOD with a written procedure relating to the delivery of concrete. The LOD will be responsible for any of its Drivers' compliance with Holcim's written procedures and any relevant legislation.

35. COMMITMENT TO TRAINING

35.1 Commitment

The Parties recognise the mutual benefits to be gained through a greater commitment to safety and training. Accordingly, each Party commits itself to appropriate training programs in order to increase the competitive performance of Holcim and the LOD.

35.2 Cost and Amount

- (a) Holcim retains the right to require a representative of the LOD and the LOD's Driver to attend training sessions each year in relation to any topic deemed relevant by Holcim.
- (b) The training will be at no cost to the LOD and will be limited to twenty four (24) hours per annum.
- (c) If 24 hours are not reached in one (1) year the unused balance will be added to the next year's balance. Unused training hours will not continue to accrue for more than two (2) years in a row
- (d) The training referred to in this clause 35.2 is in addition to the training referred to in clause 35.3.

35.3 Driver Training

- (a) Each Driver, including substitute Drivers employed or engaged by the LOD, may be required to spend up to three (3) weeks' training in how to operate the Concrete Truck and in managing Slump control of concrete in circumstances where in the reasonable opinion of Holcim the drivers skills are inadequate.
- (b) This training will include a period of at up to three (3) days in Holcim's Quality Control Laboratory under the supervision of a Holcim tester, and at least one (1) day in dispatch to understand dispatch status requirements.
- (c) Holcim will provide appropriate personnel and equipment (excluding the Concrete Truck) for the purpose of providing the training.
- (d) At the conclusion of up to a three (3) week training period, the relevant Driver/s employed or engaged by the LOD will be assessed by Holcim in respect of the Driver's performance and technical ability.
- (e) The LOD will provide any evidence reasonably required by Holcim to prove compliance with this clause 35.3.

36. OCCUPATIONAL HEALTH AND SAFETY

36.1 Safety Improvement Teams

Holcim will establish Safety Improvement Teams consistent with occupational health & safety (OH&S) legislation and Holcim policies. A representative of the LOD, and the LOD's

Driver(s) will participate fully in the Safety Improvement Team and will also attend such other safety meetings (for example tool box meetings) as required by Holcim. LOD's involved in SIT meetings will be paid at the rate specified in Item K of Schedule 3.

36.2 Safety Inductions

A representative of the LOD and the LOD's Driver(s) will attend all appropriate Holcim and delivery site safety inductions and safety training as required by Holcim and Holcim's customers, and provide current documentation required in this regard by Holcim or Holcim's customer. Such attendance will be at no cost to Holcim or the Driver/s.

36.3 Compliance

The LOD agrees that it and its Driver(s) will comply with:

- (a) relevant OH&S legislation in relation to the provision of services pursuant to this Agreement; and
- (b) Holcim's safety, health & environment policies, statements and procedures as issued, varied, or replaced from time to time by Holcim.

37. AMENITIES

37.1 Standards

All Amenities provided by Holcim at Plants for use by the LOD are to comply with all relevant provisions of the applicable OH&S legislation. All LODs will participate equally in keeping the Amenities clean and tidy at all times.

37.2 Driver's Conduct

The LOD will procure that its Driver conducts himself/herself in a tidy and appropriate manner when using the Amenities provided by Holcim.

38. UNIFORMS

38.1 Holcim to Provide

Holcim will provide uniforms and personal protective equipment (PPE) that meet Holcim's specified uniform and clothing requirements. Changes to Holcim's policies regarding clothing and PPE will be issued to the LOD from time to time and the obligations in this clause 38 relate to the latest version of the specifications issued from time to time by Holcim.

38.2 Uniform to be Worn

The LOD will ensure that its Driver wears the uniform and PPE supplied by Holcim at all times during the performance of services pursuant to this Agreement.

38.3 Standard of Appearance

The LOD must ensure that its Driver will maintain an acceptable standard of neatness, dress and appearance at all times to the satisfaction of Holcim whilst performing services pursuant to this Agreement.

39. DISPUTE RESOLUTION

39.1 Termination Rights

Nothing in this clause is intended to limit a Party's right to terminate this Agreement in accordance with the provisions set out in clause 9.

39.2 Bar to Proceedings

- (a) Unless a Party has complied with the process for dealing with disputes in accordance with this clause 39, that Party may not commence legal proceedings (including, but not limited to, any formal dispute resolution proceedings under any legislation or regulations) in relation to any dispute relating to this Agreement, except where that party seeks urgent interlocutory relief.
- (b) Where a Party to this Agreement fails to comply with this clause 39, the other Party to the Agreement need not comply with this clause before commencing legal proceedings relating to the dispute.

39.3 Process

- (a) In the event of a dispute relating to this Agreement, the LOD and the nominated Holcim Representative will, within forty-eight (48) hours of the dispute arising, meet to seek to resolve the dispute.
- (b) If the dispute is not resolved within the following five (5) Business Days (or such longer period as may be agreed), a Director of the LOD will, within a further two (2) Business Days, meet with Holcim's General Manager or his or her nominee for the Relevant Operational Area, to seek to resolve the dispute. The LOD and Holcim may have a representative present.
- (c) If the dispute is not resolved within the following five (5) Business Days, the Parties in dispute have the right to refer the matter to an agreed mediator. The Parties shall share the cost of mediation. In the event of mediation, the Parties may choose to have a representative present, or
- (d) If the dispute is not resolved within the following five (5) Business Days and the Parties are unable to agree on a mediator, the dispute may be submitted by one of the Parties to the Industrial Relations Commission of New South Wales which may conciliate the matter.
- (e) The Industrial Relations Commission of New South Wales may make a determination, which is binding on the Parties, where there is no likelihood that within a reasonable period conciliation or further conciliation will result in agreement. Any outcome imposed shall not be in breach of the National Code of Practice for the Construction Industry and Industry Guidelines as well as any legislative obligations.
- (f) Should the New South Wales Industrial Relations Commission cease to exist or for whatever reason, including any jurisdictional objection, be unable to carry out conciliation and or arbitration functions, the Parties shall appoint an agreed individual of appropriate standing to undertake the conciliation and arbitration functions pursuant to this clause 39. Should agreement not be reached by the parties, a conciliator/arbitrator will be appointed by LEADR Association of Dispute Resolvers. The cost of engaging the conciliator/arbitrator will be shared by the Parties.

- (g) The timeframes in this procedure are intended as general guides rather than mandatory requirements.
- (h) It is understood and accepted by all parties that work shall continue normally during all aspects of this procedure.
- (i) If a dispute arises that involves more than one LOD, and it is being pursued on a collective basis, the dispute may be initiated by an LOD representative.

40. FORCE MAJEURE

- (a) For the purposes of this Agreement, "Force Majeure" means any circumstance beyond the reasonable direct or indirect control and without the fault or negligence of the Party claiming Force Majeure, including any act of God, act of war, cyclone, fire, flood, explosion, storm or earthquake.
- (b) Delays in or failure of performance by a Party (other than the payment of money) will not constitute a breach of this Agreement by that Party if and to the extent that any such delay or failure is caused by a Force Majeure, provided that the Party claiming Force Majeure:
 - i. notifies the other Party in writing within three (3) days of the occurrence of the Force Majeure providing details of the Force Majeure and its anticipated likely duration and effect; and
 - ii. uses its best endeavours to resume fulfilling its obligations as promptly as possible and provides the other Party, with written notice within three (3) days of the cessation of the Force Majeure.
- (c) If a delay caused by Force Majeure continues for more than thirty (30) days, Holcim may terminate the Agreement without compensation by giving fourteen (14) days' notice to the other Parties.

41. NOTICES

41.1 General

- (a) A notice, demand, certification, process or other communication relating to this document must be in writing in English and may be given by an agent of the sender.
- (b) Each LOD will require an email address that is available to accept and receive correspondence from Holcim. This correspondence may include, but is not limited to:
 - i. safety Communications;
 - ii. electronic RCTI Statements;
 - iii. communications relating to this Agreement;
 - iv. Holcim Updates and Communication designed to inform;
 - v. scanned copies of documents that require further explanation or clarification; and

- vi. various requests for information relating to the LOD that are relevant to this Agreement.

41.2 How to Give a Communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the Party's current address for notices;
- (c) sent to the Party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by fax to the Party's current fax number for notices; or
- (e) sent by email to the Party's current email address for notices.

41.3 Particulars for Delivery of Notices

- (a) The particulars for delivery of notices are initially:

Holcim (Australia) Pty Ltd:

The name, facsimile, postal and email address identified in item 7 of Schedule 1.

LOD:

The name, facsimile, postal and email address of the LOD identified in item 1 of Schedule 1.

- (b) Each Party may change its particulars for delivery of notices by notice to each other Party.

41.4 Communications by Post

Subject to clause 41.6, a communication is deemed to have been given if posted:

- (a) within Australia to an Australian address, three (3) Business Days after posting; or
- (b) in any other case, ten (10) Business Days after posting.

41.5 Communications by Fax and/or Email

Subject to clause 41.6, a communication is deemed to have been given:

- (a) if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.
- (b) if sent by email:
 - i. when the sender receives an automated message confirming delivery; or
 - ii. four (4) hours after the time the email was sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message stating that the email has not been delivered,

whichever occurs first.

41.6 After Hours Communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is not a Business Day in the place of receipt;

it is taken as having been given on the next Business Day.

41.7 Process Service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this clause 41 or in accordance with any applicable law.

42. LEGAL COSTS

Except as expressly stated otherwise in this Agreement, each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

43. WAIVER AND EXERCISE OF RIGHTS

- (a) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

44. GOVERNING LAW AND JURISDICTION

- (a) This document is governed by and is to be construed in accordance with the laws applicable in the Operational Area.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Operational Area and waives any right to object to any proceedings being brought in those courts.

45. ASSIGNMENT OF AGREEMENT

45.1 Assignment by Holcim

Holcim may assign its rights and obligations under this Agreement without the prior consent of the LOD.

45.2 Assignment by LOD

- (a) Subject to clause 45.2(b), the LOD may not assign its rights or obligations under this Agreement without the prior written consent of Holcim.
- (b) If during the Contract Term, an LOD, wishes to assign its rights under this Agreement for the balance of the Contract Term, the following procedures shall apply:

- i. The LOD shall first give notice in writing to Holcim of the LOD's desire to assign its rights under this Agreement for the balance of the Contract Term.
- ii. If Holcim wishes to do so, Holcim may acquire the balance of the Contract Term, by providing to the LOD a written notice pursuant to this clause 45.2 and tendering to the LOD payment in a sum equal to the amount in the applicable scale to the LODs vehicle configuration in Clause 9.2 (b) that would be payable by Holcim to the LOD at the time of giving the notice under this clause 45.2. The LOD acknowledges that it is not entitled to any payment for goodwill arising in relation to this Agreement as a result of any acquisition of the balance of the Contract Term of the Agreement by Holcim.
- iii. If Holcim does not serve the notice and tender the payment in accordance with clause 45.2(b)ii within a thirty (30) day period, the LOD may assign the balance of the Contract Term to any other corporate entity approved by Holcim, within a further ninety (90) day period. After this ninety (90) day period has expired, the LOD must re-apply to assign the Agreement as set out above.
- iv. In seeking approval from Holcim to assign the balance of the Contract Term, the LOD will provide such information as Holcim may reasonably require in relation to the proposed assignee. For the avoidance of doubt, it is acknowledged that Holcim may refuse to approve a proposed assignment if Holcim is not provided with the information required in relation to the proposed assignee or if, having been provided with information about the proposed assignee, Holcim is not satisfied with the ability and willingness of the proposed assignee to provide services to the standards required by Holcim.

45.3 Deemed Assignment

For the purposes of clause 45.2(a), a transaction that would involve a change in control of the LOD will be deemed to be an assignment of rights and obligations under this Agreement. For the purposes of this clause, a change in control includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the Board of Directors of the LOD, the voting rights of the majority of the voting shares of the LOD, or the management of the affairs of the LOD.

46. RELEASE FROM AND INDEMNITY FOR PREVIOUS AGREEMENTS

- (a) On and from signature date, the Parties agree that any previous contracts or agreements between the Parties are terminated with immediate effect and the Parties will have no further obligations to each other in respect of such prior agreements or contracts.
- (b) In consideration of Holcim entering into this Agreement, the LOD immediately and forever releases Holcim and its Related Bodies Corporate (jointly and severally) and each of their present or past officers, employees or agents from all Claims of whatever nature and however arising which the LOD has had, has now or may at any time in the future (but for this Agreement) have against any of those entities or persons arising out of, relating to, or in any way connected with, or incidental to:
 - i. any old agreements or contracts;

- ii. the relationship between the LOD and Holcim or its Related Bodies Corporate under any old agreements or contracts; or
 - iii. the conduct of Holcim and/or its Related Bodies Corporate in relation to any of the matters set out in clause 46(b)i or clause 46(b)ii above, including without limitation, the calculation of utilisation cartage rates.
- (c) The LOD immediately and forever indemnifies, and agrees to keep indemnified, each of Holcim and its Related Bodies Corporate (jointly and severally) and each of their present or past officers, employees or agents against any Claim made or brought at any time by the Owner LOD, any of its Drivers or any Related Bodies Corporate of the Owner LOD arising out of any of the matters the subject of the release and discharge in clause 46(b).

47. ENTIRE UNDERSTANDING

- (a) This Agreement contains the entire understanding between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are superseded by this Agreement and are of no effect. No Party is liable to any other Party in respect of those matters.
- (c) No oral explanation or information provided by any Party to another:
 - i. affects the meaning or interpretation of this Agreement; or
 - ii. constitutes any collateral agreement, warranty or understanding between any of the Parties.

Schedule 1

LOD's particulars and Holcim details for notices

Item 1 – Company Names & Addresses

LOD PTY LTD

ABN : 00 0000 0000

Postal address

Phone No for each company:

Facsimile No for each company:

Email address for each company:

Item 2 – Operational Area at Commencement Date

All Sydney Metropolitan plants including, but not limited to –

Alexandria, Artarmon, Blacktown, Brookvale, Caringbah, Hornsby, Hurstville, Lidcombe, Liverpool, Narellan, Pendle Hill, Windsor, Emu Plains, Heatherbrae, Salamander Bay, Teralba, Tighes Hill, Wyong, Albion Park, Bowral, Nowra, Unanderra and any plants that come under the Sydney operational Area.

Item 3 – Plant, Plants or Operational Area comprising the LOD's Utilisation Groups at Commencement Date

Item 4 – Configuration of LOD's Concrete Truck

6 Wheels Truck OR 8 Wheels Truck OR 10 Wheels Truck

Item 5 -Payment for LOD Supplied Agitator

Refer to **Schedule 2A**, herein.

Item 6-Target Concrete Carrying Capacities for of LOD's Concrete Trucks

Truck (6 Wheeler):

5.6 cubic metres at a relative density to water of 2.35p

Truck (8 Wheeler):

7.0 cubic metres at a relative density to water of 2.35p

Truck (10 Wheeler):

7.8 cubic metres at a relative density to water of 2.35p

Item 7 – Holcim Details for Notices:

The General Manager Sydney and ACT Concrete

Holcim (Australia) Pty Ltd

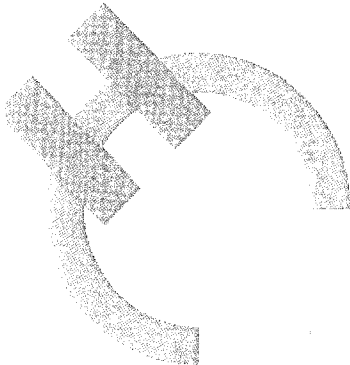
Facsimile Number: 02 8867 2288

Email address: scott.tunkin@holcim.com

Schedule 2

Truck True Cost Formula and Utilisation Cartage Rates

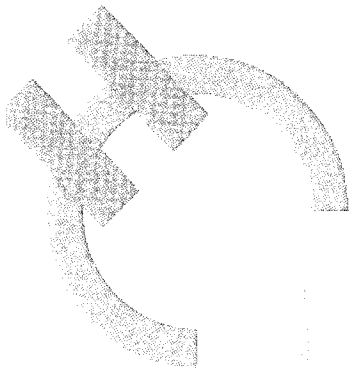
AS ATTACHED



Schedule 2A

Mixer True Cost Formula and Utilisation Cartage Rates

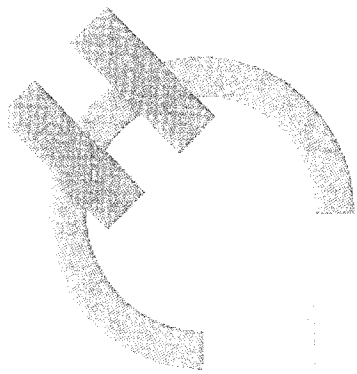
AS ATTACHED



Schedule 3

Concrete Cartage Surcharges

AS ATTACHED



Schedule 4

Details of Insurance Requirements

1. General

The insurance coverage required by clause 29 is as follows:

- (a) Motor vehicle comprehensive.
- (b) Motor vehicle compulsory third party (CTP) (if applicable)
- (c) Workers' Compensation for the LOD's Driver and any other relevant employees (including casual employees) or deemed employees.
- (d) Private Accident and Illness Insurance for Working Directors.
- (e) General liability cover (including public and product liability) to a minimum value of \$20 million with extension to cover the following:
 - (i) Damage caused by the Agitator.
(Twenty Million dollars (\$ 20,000,000) minimum value)
 - (ii) Damage due to incorrect product delivery.
(Twenty Million dollars (\$ 20,000,000) minimum value)
- (f) Comprehensive cover for damage to the Agitator.
(Minimum value \$45,000) Nil Excess Policy
- (g) Any other insurance required by Holcim from time to time.

Note: If damage is caused to a Holcim-owned mixer then Holcim will determine if the Agitator can be rebuilt or has to be replaced with a new unused Agitator. If Holcim determine the Agitator can be rebuilt, then it must be completed by an industry recognised manufacturer and/or supplier and completed in a timely manner to Holcim's satisfaction.

2. Motor Vehicle Comprehensive

The motor vehicle comprehensive policy must include a Third Party Liability in respect of bodily injury and/or property damage up to a limit of \$20 million for any one event.

The policy must also cover, but not necessarily be limited to, the following:

- (a) Finance payout;
- (b) Any losses which may arise whilst the insured is operating beyond the limits of any carriageway or thoroughfare;
- (c) Any losses due to theft, fire, flood and/or storm and tempest;
- (d) Cross liability;
- (e) Liability of passengers;
- (f) Principal's Indemnity in respect of non owned vehicles;

(g) Removal of debris/cleaning up costs;

(h) Signwriting; and

(i) Trainee Driver Cover.

(Prospective Trainee Drivers seeking Manning Approval from Holcim)

3. Motor Vehicle Compulsory Third Party

This cover is that which is commonly known as "CTP" cover, and is controlled by State Government legislation.

4. Workers' Compensation

The LOD, operating in accordance with the Agreement, is required by law to effect Workers' Compensation Insurance for each and every employee or deemed employee of the LOD.

5. Private Accident and Illness Insurance - Working Directors

The LOD must ensure its working directors are covered by Private Accident and Illness 24 hours' accident and sickness cover for a benefit for a period of up to 104 weeks on any one claim.

6. General Liability

A General Liability cover to the value of \$20 million is compulsory.

This policy must contain an extension to cover any damage or injury which may be attributed to the Agitator owned by Holcim or the LOD and carried and used by the LOD.

This policy must also contain an extension to cover for any damage that may be attributed, whether directly or indirectly, to the delivery by the LOD of an incorrect product to a customer.

7. Comprehensive Cover For Damage To Agitator

A Comprehensive cover for all theft and/or damage to the Agitator which is the property of Holcim or the LOD.

The cover must extend to all situations, whether the Agitator is attached to the LOD's truck or whilst it is removed for repair and/or maintenance.

The cover must be for a minimum value of \$45,000 and be a NIL EXCESS policy

Schedule 5

Subcontractor's Deed of Undertaking and Indemnity (to be signed by each separate LOD)

This Deed is made the day of Month]Year]

BY:

Holcim

AND

The LOD

AND

Name, address and ACN of Subcontractor] ("Subcontractor")

Introduction

- A. The LOD is a party to the Holcim NSW Concrete Lorry Owner Driver Contract Agreement ("the Agreement").
- B. The LOD wishes to appoint the Subcontractor to perform services in accordance with the provisions of the Agreement.
- C. Holcim has approved the appointment of the Subcontractor in accordance with the provisions of the Agreement subject to the Subcontractor executing this Deed.

IT IS AGREED:

1. Definitions

1.1 Definitions

In this Deed:

Agreement means the agreement between the LOD and Holcim pursuant to which the LOD agrees to mix, transport and deliver concrete for Holcim or for Holcim's customers, a copy of which is attached to this Deed.

Deed means this Deed of Undertaking and Indemnity.

Holcim means Holcim (Australia) Pty Ltd ACN 099 732 297 and its assignee or successor.

LOD means the party identified as the LOD in the Agreement.

1.2 Interpretation

Unless expressed to the contrary, in this Deed:

- (a) words in the singular include the plural and vice versa;

- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) includes means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (iv) a right includes a benefit, remedy, discretion and power;
 - (v) time is to local time in the Operational Area
 - (vi) or dollars is a reference to Australian currency;
 - (vii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission; and
 - (ix) this document includes all schedules and annexures to it; and
- (g) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.
- (h) Any terms in this Deed that are not defined in this Deed shall have the same meaning as those terms have in the Agreement.

2. Confirmation and Undertaking

2.1 Confirmation

The Subcontractor confirms to Holcim that it has read and understood the provisions of the Agreement.

2.2 Undertaking

The Subcontractor undertakes to Holcim and to the LOD that the Subcontractor will abide by all of the LOD's obligations under the Agreement as if the Subcontractor were the LOD under that Agreement.

2.3 Exceptions

Where the Subcontractor is only providing services to the LOD as a Driver of a Concrete Truck owned by the LOD, the undertaking in clause 2.2 will not extend to any provisions of

the Agreement that are relevant only to a person that supplied a Concrete Truck for the purposes of provision of services to Holcim under the Agreement.

2.4 Enforcement

The Subcontractor agrees and acknowledges that a failure by the Subcontractor to abide by the provisions of the Agreement may be treated by Holcim as a breach of the Agreement by the LOD.

3. Indemnity

3.1 Indemnity

The Subcontractor must indemnify and keep indemnified, Holcim and its assigns and successors for any loss (including loss of profit) or damage suffered or incurred by Holcim, its assigns or successors as a result of a failure by the Subcontractor to perform an obligation under the Agreement, or as a result of any act or omission by the Subcontractor in performing services required under the Agreement.

3.2 Survival

The indemnity in clause 3.1 shall survive termination or expiration of the Subcontractor's provision of services to the LOD as required.

4. Assignment

4.1 Holcim

Holcim may assign its rights and obligations under this Deed without the prior consent of the Subcontractor.

4.2 Subcontractor

The Subcontractor must not assign nor attempt to assign any of its obligations under this Deed.

EXECUTED as a Deed

EXECUTED by **HOLCIM (AUSTRALIA) PTY LTD** by being signed by those persons who are authorised under its Constitution to sign for the company

Signature of Authorised Officer

Signature of Authorised Officer

[PRINT FULL NAME BLOCK LETTERS]

[PRINT FULL NAME BLOCK LETTERS]

[USUAL ADDRESS]

[USUAL ADDRESS]

EXECUTED by **PTY LTD** by being signed by the person who is authorised under its Constitution to sign for the company

Signature of Director

[PRINT FULL NAME BLOCK LETTERS]

[USUAL ADDRESS]

EXECUTED by **PTY LTD** by being signed by the person who is authorised under its Constitution to sign for the company

Signature of Director

[PRINT FULL NAME BLOCK LETTERS]

[USUAL ADDRESS]

Schedule 6

Fairness and Respect Statement

Holcim will use its best endeavours to provide a safe workplace and a safe work environment.

It is a term of the Agreement that the LOD's Drivers, employees, Subcontractors and all other persons associated with the LOD must not harass, vilify, bully or victimise Holcim employees, contractors or customers.

Holcim has the right to terminate the Agreement without compensation in cases of harassment, vilification, bullying and victimisation by the LOD or by the LOD's Driver or its Subcontractor or the Subcontractor's employees.

Holcim requires that all its premises be free of any form of harassment, vilification, bullying or victimisation. See below for a further explanation of these terms:

Harassment is any form of behaviour (physical, spoken or written) towards another person:

- which is uninvited or unwanted by the person;
- which offends, humiliates or intimidates that person and a reasonable person should have expected that to be the case; and
- which targets the person on a ground, such as race, age, sex, disability etc.

Harassment includes unwelcome touching, pushing or other physical contact, remarks with suggestive or offensive connotations, threats, insults, offensive jokes, intrusive personal questions, hand or body gestures, or the display of offensive material.

Vilification is generally any act or words that could encourage others to hate, treat with contempt, or ridicule a person or a group of people for reasons such as age, sex, race etc.

Bullying is the deliberate use of words or actions to hurt, threaten or frighten someone. It may include threatening, taunting, persecuting, or obstructing people from doing what they want to do.

Victimisation means punishing or harassing a person because he or she has complained or intends to complain about being harassed, or vilified, or because the person has supported someone else who complained or intends to do so.

Schedule 7

Confirmation of Independent Legal Advice

SCHEDULE B

**CONFIRMATION OF INDEPENDENT LEGAL
ADVICE**

I, (name of LOD) _____

certify that the information contained in this confirmation is true and correct.

I hereby confirm that on ... (date) I attended at the office of ... (name of firm of solicitors) and was advised by ... (name of solicitor) on the contents, nature and effect of this Agreement and my legal obligations arising under the Agreement.

I further confirm that the solicitor who advised me was not retained by Holcim Australia Pty. Ltd.

SIGNED: _____

DATED: _____

* Delete if inapplicable

Schedule 8

Certificate of Independent Financial Advice

SCHEDULE B

**CERTIFICATE OF INDEPENDENT FINANCIAL
ADVICE**

1. THIS CERTIFICATE IS PROVIDED BY:

a principal of the firm _____

of _____

2. I ATTENDED IN CONFERENCE:

of _____

(the LOD)

on _____ (date)

from _____ to _____ (time)

3. THE LOD PRODUCED THE FOLLOWING DOCUMENTS TO ME:

1. A Copy of a Blank Deed between Holcim Australia Pty Ltd and the LOD (the **Deed**)
2. A copy of the Holcim NSW Concrete Cartage Agreement.

4. IDENTIFICATION OF PERSONS EXECUTING DOCUMENTS

The following evidence to identify the interviewee(s) as authorised to act on behalf of the LOD was produced to me:

5. **BEFORE ANY DOCUMENTS WERE SIGNED**, I advised the LOD of the financial obligations and risks involved in entering into the Deed and the Agreement.

6. **I AM NOT ACTING HOLCIM AUSTRALIA PTY. LTD. IN RELATION TO THIS MATTER**

7. *** I WITNESSED EXECUTION OF THE DEED BY THE LOD**

ACCOUNTANT'S CERTIFICATE

I, _____

certify that the information contained in this certificate is true and correct.

SIGNED: _____

DATED: _____

* Delete if inapplicable

Schedule 9

LOD Essential Details

Schedule 10

Key Performance Indicators

KSS	Target	Measure	Consequence of failure to meet Target
Minimum Availability	95% availability over 3 consecutive quarters	5.5 days per week, 50 weeks per year. Days deducted when work in not available	Holcim has right to review the LODs contract, up to and including Terminating the Contract with Compensation.
Workplace behaviour	Compliance with Fairness and Respect Policy	Nil Incidents	Holcim has right to review the LODs contract, up to and including Terminating the Contract with Compensation.
Safety (WHS) Operating safety Standard frequencies	Lost Time Injury Frequency Rate Nil Injuries 100% near miss reporting Nil at fault road accidents	Nil 100% Nil	Holcim has right to review the LODs contract, up to and including Terminating the Contract with Compensation.
Environmental	Adherence to driver work instruction and Holcim Policies	Nil breaches and spills	Holcim has right to review the LODs contract, up to and including Terminating the Contract with Compensation.

<p>Compliance to Holcim Quality Policies and Instructions</p>	<p>Slump deficiencies per monthly</p> <p>Added water nominated on delivery docket with signature</p>	<p>1% error rate</p> <p>100% accurate water recording.</p> <p><i>Signature obtained when possible</i></p>	<p>Holcim has right to review the LODs contract, up to and including Terminating the Contract with Compensation.</p>
<p>Compliance to Holcim requests for documentation</p>	<p>Requested document provided</p> <p>Driver Daily work diaries – completed and handed in</p> <p>LOD payments claims (Schedule payments)</p> <p>Customer signature on Delivery Dockets as required</p>	<p>Next Working Day (24 hours)</p> <p>Next Working Day</p> <p>Next Working Day</p> <p>90% dockets signed for waiting time</p>	<p>Holcim has right to withhold payment, review the LODs contract, up to and including Terminating the Contract with Compensation. .</p>
<p><u>Secondary Key Service Standards</u></p>	<p>Driver PPE compliance at all times to Holcim directives.</p> <p>Truck/s & Agitator/s cleanliness to Holcim requirements</p> <p>Truck & Agitator & Driver compliance to 3.16</p> <p>Pre-starts completed</p>	<p>Breach Recorded for each incident</p>	<p>Holcim has right to review the LODs contract, and for persistent breaches, up to and including Terminating the Contract with Compensation.</p>

Executed as an Agreement

EXECUTED by **HOLCIM (AUSTRALIA) PTY LTD** by being signed by those persons who are authorised under its Constitution to sign for the company

Signature of Authorised Officer

Signature of Authorised Officer

[TITLE]

[TITLE]

[PRINT FULL NAME BLOCK LETTERS]

[PRINT FULL NAME BLOCK LETTERS]

[USUAL ADDRESS]

[USUAL ADDRESS]

EXECUTION BY LOD BELOW

EXECUTED by **[INSERT] [ABN INSERT]** by being signed by those persons who are authorised under its Constitution to sign for the company

Signature of Director

Signature of *Director/*Secretary
[*delete whichever does not apply]

[PRINT FULL NAME BLOCK LETTERS]

[PRINT FULL NAME BLOCK LETTERS]

[USUAL ADDRESS]

[USUAL ADDRESS]