

**OVERARCHING LONG-TERM STANDARD  
CONTRACT FOR THE SALE OF  
SAWLOGS AT ROADSIDE**

**between**

**FORESTRY AND LAND SCOTLAND**

**and**

**[ ]**

***[Insert name of Purchaser]***

OVERARCHING LONG TERM STANDARD  
CONTRACT FOR THE SALE OF  
SAWLOGS AT ROADSIDE

Between

The Scottish Ministers, acting through Forestry and Land Scotland, an executive agency established pursuant to the Forestry and Land Management (Scotland) Act 2018 and having its principal place of business at Great Glen House, Leachkin Road, Inverness IV3 8NW (hereinafter referred to as "**Forestry and Land Scotland**")

and

the party whose details are set out in Part I of the Schedule (hereinafter referred to as the "**Purchaser**"),

each of Forestry and Land Scotland and the Purchaser being a "**party**" and together referred to as the "**parties**".

WHEREAS:

Forestry and Land Scotland has offered through competitive tender to sell and the Purchaser wishes to purchase the Products (as hereinafter defined) subject to the terms and conditions set out in this Agreement and the Written Submission (as hereinafter defined), together which form the Agreement.

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:-

1 **INTERPRETATION**

1.1 In this Agreement, unless the context otherwise requires, the following terms have the meanings given to them below:

**"Agreement"** means together: this agreement; the Schedule; and the Written Submission;

**"Applicable Law"** means:

- (a) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which the Purchaser is subject and/or in any jurisdiction in which this Agreement is performed;

- (b) the common law as applicable to the Purchaser, the Products and / or the removal of or access to the Products from time to time;
- (c) any binding court order, judgment or decree;
- (d) any applicable industry code, practice, policy or standard; or
- (e) any applicable direction, policy, rule or order that is from time to time binding on the Purchaser or applicable to the Products and / or the removal of or access to the Products and that is made or given by any regulatory body having jurisdiction over the Purchaser or any of its assets, resources or business.

**“Annual Contracted Quantity”** means the total quantity of Products to be sold and purchased via Call Off Contract(s) throughout each 12-month period of this Agreement as specified in Schedule Part 1;

**“Authorised Access Routes”** means the roads which may be used by the Purchaser pursuant to this Agreement marked as such on the Road Access Map(s) and which are subject to the appropriate parts of the Road Traffic Act 1988 and should comply with the classification and associated specification as stated in Part 4 of the Schedule for each Call-Off Contract, or as otherwise notified to the Purchaser by Forestry and Land Scotland from time to time;

**“Authorised Credit Facility”** means a credit facility by Forestry and Land Scotland in favour of the Purchaser and notified in writing to the Purchaser by Forestry and Land Scotland;

**“Biosecurity”** means measures taken to protect the forest environment and stop the introduction or spread of harmful organisms;

**“Business Day”** means any day on which the clearing banks are open for business;

**“Call-Off Contract”** means an individual contract including any schedules specifically linked to, and operating under, the terms of this Agreement;

**“Call-Off Contract Start Date”** means the date specified as such in Part 1 of the Call Off Contract Schedule, being the date upon which Products will become available for uplift and removal in accordance with the terms of the Harvesting Production Plan;

**“Call-Off End Date”** means either the date upon which all Products of the Call-Off Contract have been uplifted and removed from the Stacking Sites by the Purchaser in accordance with the terms of the Uplift Profile as such date may be amended in accordance with clause 7.2 or clause 7.3 or the date specified in Part 1 of an individual Call-Off Contract schedule being the date upon which Products have been uplifted and removed from the Stacking Sites by the Purchaser in accordance with the terms of the Uplift Profile as

either such date may be amended in accordance with clause 7.2 or clause 7.3;

**“Classification”** means the classification of the Products in accordance with Field Book 9;

**“Commencement Date”** means the date or last date of execution of this Agreement;

**“Confor”** means the Confederation of Forestry Industries;

**“Contract Performance Review”** means evaluation at 12 month intervals of the Key Performance Indicators (KPI's);

**“Cutting Specification”** means the specification agreed between the parties in writing for the cutting of the Products in preparation for their uplift and removal in accordance with the terms of this Agreement and set out in Schedule Part 1 of each Call-Off Contract as the same may be amended from time to time, provided always that, unless otherwise agreed, such specification must be within the minimum and maximum lengths and other parameters in relation to timber contained in this Agreement and as set out in the Tender Brief, and must otherwise be in accordance with Field Book 9;

**“DRN”** means Despatch Reference Number, a unique and pre-registered conveyance note number assigned to an individual Load or any part thereof for the uplift and removal of Products;

**“End Date”** means the date specified as such in Part 1 of the schedule of this Agreement;

**“Environment”** means all or any of the following media:

- a) air (including air within buildings or other structures and whether below or above ground);
- b) land (including buildings and any other structures or erections in, on or under it and any soil and anything below the surface of the land); and
- c) land covered with water, and water (including sea, ground and surface water),

together with any living organism and / or ecosystem supported by any such media;

**“Environmental Law”** means all applicable laws, regulations, codes of practice, circulars, guidance notes and other similar controls and advice made or issued by national or local governments or any other regulatory or administrative body from time to time in existence and where relevant enforceable relating to protection of the Environment, including, without limitation, prevention of pollution of any land, water or air due to: pollution of any land, water or air; the release, escape or other emission of any substance,

including radioactive substances; the generation, production, transportation, storage, treatment, recycling or disposal of waste; or noise or nuisance;

**“Field Book 9”** means Forestry Commission Field Book 9 (“Classification and Presentation of Softwood Sawlogs, Second Edition”) or any subsequent edition in force at the time of sale of the Products;

**“FISA”** means the Forestry Industry Safety Accord;

**“FISA Safety Guides”** means any safety guides issued by FISA from time to time which are applicable to the Purchaser, the Products and / or access to or removal of the Products;

**“FLS”** means Forestry and Land Scotland;

**“FLS Policies and Procedures”** means those relevant policies and procedures as solely determined by Forestry and Land Scotland and made available to the Purchaser via Confor as the same may subsequently be modified by Forestry and Land Scotland from time to time;

**“Force Majeure”** means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including industrial action, fire, flood, violent storm, pestilence, explosion, malicious damage, armed conflict, acts of terrorism, nuclear, biological or chemical warfare, or any other disaster, natural or man-made other than fire or windblow damage as provided in Clause 7.9.4;

**“The Forest and Land”** means any land placed at Forestry and Land Scotland’s disposal by the Scottish Ministers under the Forestry and Land Management (Scotland) Act 2018;

**“FSC”** means Forest Stewardship Council;

**“Good Industry Practice”** means standards, practices, methods and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Purchaser under the same or similar circumstances;

**“Harvesting Production Plan”** means a 6-month schedule of Work Sites with indicative production to roadside quantities for each Call-Off Contract, provided by Forestry and Land Scotland to facilitate agreement of the Uplift Profile;

**“Harvesting Recovery Plan”** means a plan prepared by Forestry and Land Scotland and agreed in writing by both parties, in the event that the actual volume of Products made available by Forestry and Land Scotland under a Call-Off Contract is 20% or more below the volumes specified in the Uplift Profile;

**“Health and Safety Law”** means all applicable national or local laws or regulations (and any codes of practice, circulars or guidance notes issued pursuant thereto (including any issued or approved by the Health & Safety Executive or any equivalent body)) which relate to health and safety or the conduct of forestry operations, work on forest land and/or trees or sawlogs directly derived from a tree on forest land or such other operations or processes as may be binding on the Purchaser or applicable to the Products and / or the removal of or access to the Products from time to time and all judicial and administrative interpretations of any of the foregoing;

**“Inspector”** means a person acceptable to both parties with at least ten years’ relevant experience in forestry matters or in the timber trade and with relevant, recognised qualifications who may from time to time be appointed, at the request of either of the parties. In the event of failure by either party to agree the Inspector to be appointed then the Inspector will be independently appointed by the President for the time being of the Institute of Chartered Foresters;

**“KPI’s”** means the corporate key performance indicators laid out in the Tender Brief and further developed from the Written Submission, agreed between both parties and specified in Appendix 1 of the Schedule;

**“Load”** means an individual load of Products uplifted and removed by the Purchaser in terms of this Agreement;

**“Location Map(s)”** means the map annexed as Part 2 of the schedule of each Call-Off Contract, or as otherwise notified to the Purchaser by Forestry and Land Scotland from time to time in any subsequent addendum;

**“Lost Quantity”** means failure on the part of the Purchaser to uplift all available and accessible Products on a Call-Off Contract by the end of a 6-monthly period, and Forestry and Land Scotland have withdrawn all or part of the equivalent quantity from the Total Contracted Quantity;

**“Maximum Quantity”** means 105% (one hundred and five per cent) of the Total Contracted Quantity measured on a pro-rata basis at the end of each 12-month period during the term of this Agreement;

**“Minimum Quantity”** means 95% (ninety-five per cent) of the Total Contracted Quantity measured on a pro-rata basis at the end of each 12-month period during the term of this Agreement;

**“Outstanding Quantity”** means failure on the part of Forestry and Land Scotland to produce the Call-Off Contract quantity to roadside at least 4 weeks prior to the end of a 6-monthly period, or where allocated Products have been inaccessible, for the Purchaser to complete uplift;

**“PEFC”** means the Programme for the Endorsement of Forest Certification;

**“Performance Improvement Plan” (PIP)** means a timebound action plan to resolve poor and ineffective performance specific to the KPIs and any other terms and conditions specified in Part 1 of the Schedule ;

**“Pre-paid Instalment”** means in respect of the Products one or more equal payments spread over an agreed period of time amounting to the equivalent value of the Total Contracted Quantity multiplied by the Price (plus VAT), (each instalment to be paid by the Purchaser in advance of uplift and removal of the relevant Products);

**“Price”** means the price(s) applying from time to time for each Call-Off Contract as specified in or agreed pursuant to Clause 8, derived by negotiation or any other methodology proposed in the Written Submission and accepted by Forestry and Land Scotland;

**“Products”** means the sawlogs located on the Stacking Sites in the period between the Call-Off Start Date and the Call-Off End Date, the Classification and other details which are set out in Part 1 of the Schedule of the Call-Off Contract;

**“Public Access Management Plan (PAMP)”** means the plan applicable to forest operations that are classified by Forestry and Land Scotland as being medium to high risk for members of the public;

**“Purchaser Representatives”** means all persons engaged from time to time by the Purchaser in connection with this Agreement, including in connection with access to and / or removal of the Products, including:

- (a) its employees and workers (including persons employed by a third party but working for and under the control of the Purchaser);
- (b) its agents, service providers, contractors (including, without limitation, haulage contractors) and carriers or, in each case, any employees, sub-contractors or agents thereof; and / or
- (c) any sub-contractors of the Purchaser or any employees thereof.

**“Reject Material”** means Products supplied outwith the Cutting Specification for a Call-Off Contract or which have deteriorated as a consequence of any breach by Forestry and Land Scotland of its obligations under this Agreement to an extent it has been assessed by Forestry and Land Scotland as no longer saleable within the original Classification;

**“Road Access Map(s)”** means the map or maps annexed as Part IV of the Call-Off Contract schedule;

**“Road Haulage of Round Timber Code of Practice”** means the document entitled "Road Haulage of Round Timber Code of Practice Fifth Edition 2020" published by the Forestry Contracting Association Ltd on behalf of the Roundwood Haulage Working Party, as the same may be updated,

amended or replaced from time to time, and which is approved by Forestry and Land Scotland;

**“Schedule”** means the schedule in four Parts annexed and attached as relative to this Agreement;

**“Site Specific Conditions”** means any specific conditions or restrictions relative to any Work Sites as set out in Part 3 of the Schedule for each Call off Contract or as otherwise notified to the Purchaser by Forestry and Land Scotland from time to time in any subsequent addendum;

**“Specification Range”** means the log specification and species mix to be supplied throughout the full contract term as laid out in the Tender Brief and in Part 2 of the Schedule of this Agreement;

**“Stacking Sites”** means those locations adjacent to Authorised Access Routes, at all times located within the area shown by hatching (or otherwise identified) in the Road Access Map on Part 4 of the Call-Off Contract Schedule under which the Products will be presented;

**“Start Date”** means the date specified as such in Schedule Part 1 of this Agreement;

**“Tender Brief”** means the written document as published by Forestry and Land Scotland, detailing conditions of sale and award criteria, corporate KPI's, product specifications, period of contract and other pertinent conditions of award pursuant to which this Agreement has been awarded;

**“Total Contracted Quantity”** means the total quantity of Products to be sold by Forestry and Land Scotland and purchased by the Purchaser via Call-Off Contract(s) throughout the initial term of this Agreement as specified in Schedule Part 1, and subject to variation in the event of any period of extension thereafter;

**“Unauthorised Representative”** means any haulage Contractor(s) and / or any other Purchaser Representative(s) whose identity has not been notified to Forestry and Land Scotland and who accesses or attempts to access the Sale Area for the uplift and removal or attempted uplift and removal of the Products;

**“Unauthorised Uplift”** means any instance of the Purchaser or any Purchaser Representative uplifting and removing Products otherwise than in accordance with Forestry and Land Scotland Uplift Policy and Procedures (a copy of which is available on the Forestry and Land Scotland website);

**“United Kingdom Forestry Standard (UKFS)”** means the reference standard for sustainable forest management in the UK;

**“UK Woodland Assurance Standard (UKWAS)”** means an independent certification standard for verifying sustainable woodland management in the UK used for both FSC and the PEFC certification;



**"Uplift Profile"** means the profile for the uplift and removal of the Products by the Purchaser as agreed between the parties, specific to individual Call-Off Contracts in accordance with the terms of clause 3.6 or determined in accordance with the terms of clause 3.7 as the same may be amended from time to time in accordance with the terms of clause 3.7;

**"Uplift Recovery Plan"** means a revised profile for the uplift and removal of Products to be prepared by the Purchaser, specific to individual Call-Off Contracts and agreed in writing by both parties, in the event that the Purchaser has failed to uplift available Products and the actual volume of Products uplifted by the Purchaser is 20% or more below the volume of Products required to be uplifted by the Purchaser in terms of the Uplift Profile;

**"Work Sites"** means those areas of land including any Authorised Access Routes and Stacking Sites (at all times located within the area(s) shown by hatching (or otherwise identified) on the Road Access Map; and

**"Written Submission"** means the Purchaser's written response to the Tender Brief detailing how they will deliver on each of the criteria referred to therein, which Written Submission shall form part of the KPI's and any specified contract conditions as detailed in Schedule Part 1 of this Agreement .

- 1.2 References to any of the parties hereto shall, subject to Clause 9, include their respective executors, personal representatives, successors in title and assignees.
- 1.3 The headings in this Agreement and in the Schedule are inserted for convenience only and shall not be taken into account in the interpretation of them.
- 1.4 References to recitals, numbered clauses and sub-clauses are references to recitals, clauses and sub-clauses of this Agreement unless the context otherwise requires.
- 1.5 References in this Agreement to any statute or statutory or legislative provisions shall be deemed to include reference to any statute, regulation or statutory instrument which amends, extends, consolidates or replaces the same (or shall have done so) and to any other regulation, statutory instrument or other subordinate legislation made thereunder or pursuant thereto.
- 1.6 In this Agreement, the words "include", "includes", "including" and any similar words or expressions are to be construed as if they were immediately followed by the words "without limitation".

## 2 **SALE OF THE PRODUCTS**

- 2.1 Pursuant to and subject to the terms and conditions of this Agreement Forestry and Land Scotland shall sell and the Purchaser shall purchase the Total Contracted Quantity.
- 2.2 Neither party will be deemed to be in breach of Clause 2.1 where the amount of Products made available or uplifted is within plus or minus 5% of the Total Contracted Quantity. For the avoidance of any doubt, Forestry and Land Scotland shall be required to supply at least the Minimum Quantity at roadside for collection and the Purchaser shall be required to purchase, uplift and remove at least the Minimum Quantity. Forestry and Land Scotland shall not be obliged to supply Products in excess of the Maximum Quantity and reserve the right to recover any quantity in excess of the Maximum Quantity from the Purchaser in terms of this Agreement.
- 2.3 The parties may, from time to time, agree to vary the Annual Contracted Quantity and / or Products across supplying areas within the terms of the Minimum Quantity and Maximum Quantity of this Agreement agreeing an amendment to Part 1 of the Schedule. Unless otherwise agreed in writing, the terms of this Agreement shall apply to such sales as if each reference to Part 1 of the Schedule was a reference to the same as amended in terms of this Clause 2.3.
- 2.4 Pursuant to clause 2.2 and 2.3, Forestry Land Scotland will provide the Purchaser with monthly Call-Off Contract performance reports to monitor the quantity of Products made available and uplifted. In the event of a Call-Off Contract being more than 10% but less than 20% behind the agreed Uplift Profile, either party will take relevant action to recover the contract to within 10%. In the event of a Call-Off Contract being more than 20% behind the agreed Uplift Profile, clauses 3.5 and 3.6 shall apply.
- 2.5 Both parties will carry out a joint Contract Performance Review of the agreed KPIs using the standard scorecard and category ratings 1 – 4. In the event of a KPI category being evaluated at 1 (Major Concern) or 2 (Minor Concern), a Performance Improvement Plan will be agreed between both parties and the Purchaser shall comply with the terms of that Performance Improvement Plan.
- 2.6 Pursuant to clause 2.5, should the Purchaser fail to comply with the terms of a Performance Improvement Plan in terms of clause 2.5 to the satisfaction of Forestry and Land Scotland then Forestry and Land Scotland shall be entitled to terminate this Agreement in terms of clause 7.8.
- 2.7 Forestry and Land Scotland reserve the right to require random sample documentary evidence which demonstrates delivery and compliance for a KPI and the Purchaser will be required to provide such evidence within 28 days of a request from Forestry and Land Scotland for such evidence.

### **3 UPLIFT AND REMOVAL OF THE PRODUCTS**

- 3.1 The Purchaser shall, prior to the Call-Off Start Date, notify Forestry and Land Scotland in writing of the haulage contractor(s) and / or any other Purchaser

Representative(s) authorised by the Purchaser to access the Work Site for the uplift and removal of the Products of in terms of each Call-Off Contract. In the event that the Purchaser has failed to notify Forestry and Land Scotland of the relevant haulage contractor(s) and / or any other Purchaser Representatives prior to the Call-Off Start Date, Forestry and Land Scotland shall be entitled at its sole discretion to defer the Start Date for a period of up to 28 days, in which case clause 3.12 shall apply.

- 3.1 The Purchaser shall, in its capacity as forest works manager for the haulage of timber and in accordance with applicable FISA Safety Guides: (i) provide for each Call-Off Contract site specific information and maps to the haulage contractor(s) and / or any other Purchaser Representative(s) authorised by the Purchaser to access the Work Site for the uplift and removal of the Products; (ii) specify health and safety measures with which such haulage contractor(s) and / or any other Purchaser Representative(s) must comply; (iii) ensure arrangements are in place for the reporting of incidents, unsafe practices or dangerous occurrences; and (iv) procure that any Purchaser Representatives shall comply at all times with Good Industry Practice in respect of any activities which may endanger the general public whilst on Forestry and Land Scotland Land and in and around the Authorised Access Routes and the Sale Area. Forestry and Land Scotland shall estimate the potential frequency of incursions to the Authorised Access Routes and the Sale Area by the general public and this shall be indicated in Part 4 of the Schedule. Where the need for a PAMP has been identified by Forestry and Land Scotland, the parties shall agree the terms of any such PAMP and the Purchaser shall comply with any requirements identified in such PAMP and/or provide input in to the PAMP and its delivery.
- 3.2 Pursuant to clause 3.2, Forestry and Land Scotland in its capacity as forest works manager for the harvesting and extraction of Products to roadside, shall ensure that the operator has presented the Stacking Site in such a manner as to facilitate the ongoing safe removal of Products and the overall stability of the Stacking Site(s) and the Products thereat are presented in such a manner so as to not endanger any person(s) or the Environment. The Purchaser shall and should procure that all Purchaser Representative shall report any occurrence of unsafe stacking to Forestry and Land Scotland Call-Off Contract manager without delay. Immediately upon the completion of any uplift and removal of the Products, the Purchaser shall or shall procure that the relevant Purchaser Representative shall ensure that the Stacking Site has been left in such a manner as to facilitate the ongoing safe removal of Products and the overall stability of the Stacking Site(s) and the Products thereat are left in such a manner so as to not endanger any person(s) or the Environment. Without prejudice to the generality of the foregoing, both parties in turn shall ensure that Products are stacked at safe stacking heights relevant to the conditions, leaving stable edges and avoiding leaning stack faces or overhanging billets as specified in the FISA Forest Haulage Safety Manual 2018 or any subsequent version. In the event that either party fails to comply with this clause 3.3, the other party shall be entitled to terminate the Call-Off Contract with immediate effect and the remaining quantity shall be lost to the Total Contracted Quantity.

- 3.3 The Purchaser shall be required to notify Forestry and Land Scotland in writing of any change to the identity of the haulage contractor(s) and / or any other Purchaser Representative(s) authorised by the Purchaser to access the Work Site for the uplift and removal of the Products throughout the period of a Call-Off Contract. In the event that the Purchaser fails to notify Forestry and Land Scotland of any such change in writing, prior to the date of a scheduled uplift in terms of the Uplift Profile and any haulage contractor(s) and / or any other Purchaser Representative(s) whose identity has not been notified to Forestry and Land Scotland (an “**Unauthorised Representative**”) accesses or attempts to access the Work Site for the uplift and removal or attempted uplift and removal of the Products, then the Purchaser’s rights to uplift and remove Products in terms hereof shall be suspended for a number of Business Days equal to the number of uplifts or attempted uplifts made by any Unauthorised Representative, which period of suspension shall commence on the next Business Day immediately following the date of the relevant access or attempted access by the Unauthorised Representative(s). In the event that the Purchaser or any Purchaser Representative fails to comply with this clause 3.4, then clause 3.22 and 3.23 shall apply.
- 3.4 Forestry and Land Scotland shall provide the Purchaser with a Harvesting Production Plan pertaining to the initial 6 month period for each Call-Off Contract, and subsequent 6 month period thereafter, at least 4 weeks prior to the scheduled start date of said period, and shall, if necessary, provide the Purchaser with a Harvesting Recovery Plan for each Call-Off Contract within 7 days of written request by the Purchaser.
- 3.5 Pursuant to clause 3.5, when providing the Harvesting Production Plan Forestry and Land Scotland will request from the Purchaser and the Purchaser shall provide an Uplift Profile for each Call-Off Contract pertaining to the initial 6 month period, and subsequent 6 month period thereafter, at least 2 weeks prior to the scheduled Call-Off Start Date of said period. Both the Harvesting Production Plan and Uplift Profile for each Call-Off Contract shall be agreed between the parties prior to the Call-Off Start Date of each period and either may be amended from time to time as agreed between the parties in writing. The Purchaser shall, from the scheduled Start Date, commence the uplift and removal of the Products in accordance with the terms of the Uplift Profile or, as the case may be, an Uplift Recovery Plan.
- 3.6 In the event that the Harvesting Production Plan and Uplift Profile are not agreed between the parties prior to the scheduled Start Date, then Forestry and Land Scotland shall be entitled at its sole discretion (acting reasonably) to determine the Harvesting Production and Uplift Profile for each Call-Off Contract and to amend any such profiles from time to time, in which case it shall notify the Purchaser in writing. The Purchaser shall comply with the Uplift Profile as determined or amended by Forestry and Land Scotland in terms of this clause 3.7.
- 3.7 The Call-Off Start Date and the Call-Off End Date for each Call-Off Contract shall be as specified in Part 1 of the Call-Off Contract Schedule.

- 3.8 For the purposes of this Agreement only and subject to Clauses 3.8 and 7.15 or as otherwise be provided in this Agreement, Forestry and Land Scotland for each Call-Off Contract shall:-
- 3.8.1 subject to Clause 3.10 and the Site Specific Conditions, allow the Purchaser access to and egress from the Stacking Sites using the Authorised Access Routes, to uplift and remove the Products;
  - 3.8.2 supply the Products stacked at Stacking Sites in such a manner as will facilitate safe removal of the Products by the Purchaser from the Stacking Sites using the Authorised Access Routes;
  - 3.8.3 make the Products available for collection at Stacking Sites in accordance with the Harvesting Production Plan or, as the case may be, a Harvesting Recovery Plan, and the Uplift Profile or, as the case may be, an Uplift Recovery Plan; and
  - 3.8.4 notify the Purchaser on a weekly basis between the Start Date and the End Date which Products are available for uplift and removal by the Purchaser in accordance with Clause 3.9.3 (hereinafter referred to as a “**Weekly Stock Notification**”).
- 3.9 Unless this Agreement expressly provides otherwise, the Purchaser shall only uplift and remove the Products under a Call-Off Contract as specified in the relevant Weekly Stock Notification and shall uplift and remove the Products in accordance with the timescales and minimum quantities referred to in the Uplift Profile or, as the case may be, an Uplift Recovery Plan and in any event on or before a period End Date.
- 3.10 The Purchaser may for each Call-Off Contract, defer on uplift and removal of the Products specified in the relevant Weekly Stock Notification in terms of clause 3.10 for a period of:
- 3.10.1 up to 28 days from the Start Date;
  - 3.10.2 or, in the case of any scheduled uplift and removal occurring after the Start Date, up to 28 days from the date of the most recent uplift and removal having occurred,
- or, in each case, such later date and time as may be approved in writing by the head of marketing and sales of Forestry and Land Scotland.
- 3.11 In the event that the Purchaser fails to uplift and remove any Products within the periods referred to in clauses 3.11.1 and 3.11.2 (or such later date and time as may be approved in writing by the head of marketing and sales of Forestry and Land Scotland in terms of clause 3.11), Forestry and Land Scotland may invoice the Purchaser in relation to the quantity of Products made available by Forestry and Land Scotland for uplift and removal by the Purchaser on a Call-Off Contract, in which case the Purchaser shall pay such invoice in accordance with the terms of this Agreement and shall, within seven days of the date of such invoice provide Forestry and Land Scotland

with an Uplift Recovery Plan if the actual volume of Products uplifted by the Purchaser is 20% or more below the volume of Products required to be uplifted by the Purchaser in terms of the Uplift Profile.

- 3.12 The Purchaser shall ensure that and shall procure that all Purchaser Representatives shall ensure that:
- 3.12.1 all vehicles use only the Authorised Access Routes (written details of which must be provided by the Purchaser to all Purchaser Representatives) and are, when loaded, within the weight limits defined by the road classification applicable to such Authorised Access Routes or as otherwise specified on the Road Access Map. Forestry and Land Scotland gives no warranty or representation (whether express or implied) that any road or route other than an Authorised Access Route is suitable for use by vehicles;
  - 3.12.2 all vehicles are driven and used with all proper care and driven at a speed not exceeding 15mph, and as such shall be reasonable in all the circumstances including without limitation the presence of other forest users, the nature of the route and vehicular load, and the prevailing weather and road conditions;
  - 3.12.3 every reasonable precaution is taken to prevent any damage to the Authorised Access Routes including, without prejudice to the generality of the foregoing or the following, ensuring that Authorised Access Routes are not used after exceptionally heavy rains or during or after a thaw, until suitable for use without causing damage;
  - 3.12.4 all vehicles and all vehicular access to or egress from the Forest and Land and all uplift and removal of Products comply with: Applicable Law; Forestry and Land Scotland Policies and Procedures; any Site Specific Conditions ; and the terms of the Road Haulage of Round Timber Code of Practice, including the terms therein relating to avoiding convoys of vehicles on the Authorised Access Routes;
  - 3.12.5 for any low ground pressure access routes designated as such by Forestry and Land Scotland from time to time, all vehicles are fitted with appropriate tyre pressure control systems or other low ground pressure technology which in each case enable the driver of the relevant vehicle to adjust the tyre pressure of the vehicle's tyres to reflect the vehicle's load and the conditions of the Authorised Access Routes from time to time and the Purchaser shall or shall procure that any relevant Purchaser Representative shall provide Forestry and Land Scotland with evidence in form and substance satisfactory to Forestry and Land Scotland of the Purchaser's compliance with the terms of this clause 3.15.5;
  - 3.12.6 it or they have obtained prior authorisation and approval from Forestry and Land Scotland before commencing uplift and removal of Products from the Stacking Sites;

- 3.12.7 it or they uplift and remove Products from the Stacking Sites in accordance with: the Uplift Profile or, as the case may be, an Uplift Recovery Plan and the Weekly Stock Notification relative to such Products, including the timescales for uplift and removal of Products set out therein; Applicable Law; Forestry and Land Scotland Policies and Procedures; and Good Industry Practice;
- 3.12.8 the use of any machine or method of working which in the opinion of Forestry and Land Scotland is causing, or is likely to cause, avoidable damage to standing trees, any road, path, track or drain, or to other property, is stopped immediately upon request from Forestry and Land Scotland;
- 3.12.9 the Authorised Access Routes and all roads in and around the Stacking Sites (including, for the avoidance of doubt all public rights of way and access, unless specifically agreed by Forestry and Land Scotland) at all times are kept free of obstructions arising from the Purchaser's operations which would prevent free flow of traffic except for a minimum of delay; and
- 3.12.10 no unauthorised or unlawful discharges are made as a result of the Purchaser's or any Purchaser Representatives' operations to any drains, sewers, controlled waters or other waters either in contravention of Environmental Laws or which may cause damage to man, any other living organism or the Environment.
- 3.13 In the event that all or part of the Authorised Access Routes require to be repaired or maintained, Forestry and Land Scotland shall be entitled to close all or part of the Authorised Access Routes while the work is carried out, provided always that, in that event, Forestry and Land Scotland shall (save in case of an emergency) use reasonable endeavours to give the Purchaser at least five Business Days' notice of any such closure.
- 3.14 Where, through no fault of the Purchaser or any Purchaser's Representatives, any of the Authorised Access Routes requires repair Forestry and Land Scotland shall as soon as is reasonably practicable after that fact has been made known to Forestry and Land Scotland endeavour to repair such damaged part or parts of that Authorised Access Route to the standard of the road classification as stated in Schedule Part IV of the Call-Off Contract. In the event that all or part of any of the Authorised Access Routes require to be repaired or maintained as a result of any negligence of the Purchaser or any breach of this Agreement by the Purchaser, then the Purchaser shall, upon receipt of a notice from Forestry and Land Scotland, carry out such repairs and / or maintenance as are specified in that notice within such timescales as Forestry and Land Scotland may reasonably require and to the reasonable satisfaction of Forestry and Land Scotland, failing which Forestry and Land Scotland shall be entitled to undertake such repairs and / or maintenance or instruct a third party to do so, in which case the Purchaser shall indemnify and keep indemnified Forestry and Land Scotland in respect of the costs, expenses and other liabilities suffered or

- incurred by Forestry and Land Scotland in respect of such repairs and / or maintenance. Forestry and Land Scotland will provide the Purchaser with a copy of the Forest Road specification. Any repairs carried out by the Purchaser due to negligence on the part of the Purchaser or any of the Purchaser Representatives or any breach of this Agreement by the Purchaser will be carried out to the road specification and return the Forest Road to the condition prior to the negligent act(s).
- 3.15 Without prejudice to any other rights of Forestry and Land Scotland the Purchaser shall be liable for any wilful, reckless or negligent damage (including without limitation damage specified in Clause 17.2) due to any act or default of the Purchaser or the Purchaser's Representatives and shall make good the same to the satisfaction of Forestry and Land Scotland within ten Business Days of its occurrence or within such other timescale as Forestry and Land Scotland (acting reasonably) may specify.
- 3.16 In the event that the Purchaser or any Purchaser Representative uplifts and removes Products on a Call-Off Contract which have not been allocated to the Purchaser in accordance with the Weekly Stock Notification without the prior agreement of Forestry and Land Scotland (in each case an **“Unauthorised Uplift”**), the Call-Off Contract and the Purchaser's rights to uplift and remove Products in terms hereof shall be suspended for a number of Business Days equal to the number of Unauthorised Uplifts made by the Purchaser, which period of suspension shall commence on the next Business Day immediately following the date of the relevant Unauthorised Uplift(s).
- 3.17 In the event that the Purchaser or any Purchaser Representative fails at any time to comply with Forestry and Land Scotland Policies and Procedures relating to uplift of Products, the Call-Off Contract and the Purchaser's rights to uplift and remove Products in terms hereof shall be suspended for a period of at least two Business Days or such longer period as Forestry and Land Scotland (acting reasonably) may at its sole discretion determine, having regard to the nature and extent of such failure to comply, which period of suspension shall commence on the next Business Day immediately following the date upon which Forestry and Land Scotland determines that such failure to comply has occurred.
- 3.18 During any period of suspension of a Call-Off Contract and the Purchaser's rights to uplift and remove Products in terms of clause 3.17 or clause 3.18, the Purchaser shall not (and shall procure that the Purchaser's Representative shall not) uplift or remove any Products or enter or otherwise access the Forest and Land for the purposes of uplift or removal of any Products.
- 3.19 In the event that the Purchaser or any Purchaser Representative fails to comply with the terms of clause 3.19 then the Call-Off Contract and the Purchaser's rights to uplift and remove Products in terms hereof shall be suspended for a further period of five Business Days, which period of suspension shall commence on the next Business Day immediately following



the date upon which Forestry and Land Scotland determines that such failure to comply has occurred.

- 3.20 In the event that the Purchaser or any Purchaser Representative makes more than three Unauthorised Uplifts during the term of a Call-Off Contract, Forestry and Land Scotland shall be entitled to terminate the Call-Off Contract with immediate effect in terms of clause 7.7. and the remaining quantity shall be lost to the overarching Agreement.

#### 4 **REJECT MATERIAL**

- 4.1 Forestry and Land Scotland will make available the Total Contracted Quantity for each Call-Off Contract in accordance with the Cutting Specification.
- 4.2 Where the Purchaser consider that any Load contains Reject Material, it shall notify Forestry and Land Scotland in writing as soon as reasonably practicable and in any event within 5 Business Days of the date of uplift and removal of such Load, failing which the Purchaser shall not be entitled to treat any Products in the relevant Load as Reject Material. For the avoidance of any doubt, the Purchaser shall not be entitled to treat as Reject Material any Products in a Load which have deteriorated as a consequence of any failure by the Purchaser to comply with its obligations in terms of this Agreement, including any failure by the Purchaser to uplift and remove Products in accordance with the terms of this Agreement.
- 4.3 A notice under clause 4.2 must:
- 4.3.1 specify the individual DRN(s) of the relevant Load(s) to which it relates; and
  - 4.3.2 specify in reasonable detail the estimated rejected quantity and reasons why the Load(s) in question are considered to contain Reject Material.
- 4.4 The Purchaser shall at its own expense ensure that any Load or part thereof which is considered by the Purchaser to contain Reject Material and in respect of which a notice under clause 4.2 has been issued is stored in isolation through a system which employs appropriate technical and organisational measures to prevent contamination of the relevant Load or part thereof from material from sources other than Forestry and Land Scotland.
- 4.5 Forestry and Land Scotland shall be entitled to inspect any Load or part thereof which is considered by the Purchaser to contain Reject Material and in respect of which a notice under clause 4.2 has been issued and the Purchaser shall grant Forestry and Land Scotland access to the relevant location at which any such Load or part thereof is stored in for the purposes of any such inspection.

- 4.6 An inspection in terms of clause 4.5 shall take place within 5 Business Days of receipt by Forestry and Land Scotland of a notice in terms of clause 4.2, otherwise the relevant Load will be deemed to have been rejected by the Purchaser and accepted as such by Forestry and Land Scotland
- 4.7 Where an inspection in terms of clause 4.5 is not possible, the Purchaser shall upon request provide Forestry and Land Scotland with such information and evidence as Forestry and Land Scotland may reasonably require in respect of any Load or part thereof which is considered by the Purchaser to contain Reject Material and in respect of which a notice under clause 4.2 has been issued. The Purchaser shall provide Forestry and Land Scotland with such information and evidence within 5 Business Days of request, failing which the Purchaser shall not be entitled to treat any Products in the relevant Load as Reject Material.
- 4.8 Where both parties agree that any Load or part thereof contains Reject Material, the parties may agree that one of the following arrangements shall apply in respect of such Reject Material:
- 4.8.1 shall be deducted from the total net weight in tonnes of the relevant Load derived from the weighbridge record, in which case the Price in respect of the relevant Load shall be calculated by reference to the remaining net quantity in tonnes or cubic metres under bark following deduction of the relevant Reject Material;
- 4.8.2 shall be retained and processed by the Purchaser, in which case a 25% reduction to the Price shall be applied in respect of the relevant Reject Material, which shall be invoiced or self-billed as a separate transaction with a separate DRN for the quantity of the relevant Reject Material in tonnes / cubic metres under bark;
- 4.8.3 shall be returned to Forestry and Land Scotland, in which case removal of the Reject Material will be arranged by Forestry and Land Scotland within 10 Business Days of agreement at the expense of Forestry and Land Scotland, failing which the Purchaser shall be entitled to return the relevant Reject Material to the Stacking Site from which it was originally uplifted and removed and Forestry and Land Scotland shall reimburse the Purchaser in relation to the reasonably and properly incurred haulage costs in so returning the relevant Reject Material; or
- 4.8.4 where it cannot be stored by the Purchaser in isolation, shall be sold by the Purchaser for and on behalf of Forestry and Land Scotland as uncertified timber as defined by FSC and PEFC guidelines from time to time, and subsequently invoiced or self-billed as a separate transaction for the quantity of Reject Material in tonnes or cubic metres under bark under the terms and conditions of a separate contract between the parties.
- 4.9 Should the Purchaser request a site visit to quality assure the Products, this will be agreed by both parties and a visit will take place on a date agreed by

the parties. Where it is deemed appropriate, the harvesting machine operator employed or contracted by Forestry and Land Scotland in relation to the harvesting of the relevant Products will accompany both parties on the site visit and this will be arranged by Forestry and Land Scotland.

- 4.10 Should the cumulative quantity of Reject Material agreed by the parties in terms of clause 4.8 at any time exceed 5% of the quantity of Products made available to the Purchaser for uplift on a Call-Off Contract, and within a quarterly rolling period, either party shall be entitled to terminate the Call-Off Contract with immediate effect in terms of clause 7.7. and the remaining quantity shall be deducted from the Total Contracted Quantity.

## 5 METHODS FOR VOLUME MEASUREMENT AND SAMPLE CHECKS

- 5.1 For the purposes of establishing the volume of the Products to be purchased and sold pursuant to this Agreement, Forestry and Land Scotland and the Purchaser shall either agree in writing the fixed conversion factors applicable to the Products and /or species group specific for the regional location shown in the Location Map, (the “**Fixed Conversion Factors**”) or adopt scan measure loads, compliant with the criteria laid out in clauses 5.10 – 5.15.2 of this agreement
- 5.2 The Fixed Conversion Factor(s) or use of scan measure loads shall be agreed between the parties prior to the Call-Off Start Date.
- 5.3 In the event that the Fixed Conversion Factors are not agreed between the parties prior to the Call-Off Start Date, or the Purchaser is not able to comply with the criteria for scan measure loads, either party shall be entitled to terminate this Agreement with immediate effect in terms of clause 7.7. and the remaining quantity shall be lost to the Total Contracted Quantity.
- 5.4 The agreed or determined Fixed Conversion Factor(s) shall be applied for the duration of the Call-Off Contract unless varied by mutual agreement of the parties.
- 5.5 The agreed or determined Fixed Conversion Factor(s) shall be applied to the net weight for each individual quantity of Products at the time at which such Products cross the weighbridge in order to derive a measured volume in cubic metres under bark.
- 5.6 Forestry and Land Scotland may from time to time and at any time require the Purchaser to carry out sample measured Load(s) or scan measured Load(s) to determine the ongoing accuracy of the Fixed Conversion Factors, at a frequency to be determined by Forestry and Land Scotland.
- 5.7 The Purchaser shall carry out any sample measured Load(s) or scan measured Load(s) required by Forestry and Land Scotland under clause 5.6 within 5 Business Days of notice from Forestry and Land Scotland to the Purchaser to that effect. Forestry and Land Scotland shall be entitled to appoint a representative to attend at any such sample measured Load(s) or scan measured Load(s) and the Purchaser shall provide Forestry and Land

Scotland with at least 2 Business Days' notice of the date, time and location of any such sample measured Load(s) or scan measured Load(s). Any such sample measured Load(s) shall be carried out in accordance with the terms of clause 5.8. Any such scan measured Load(s) shall be carried out in accordance with the terms of clauses 5.10 and clause 5.11.

- 5.8 The volume of each sawlog constituting a sample measured Load shall be calculated from the length at the shortest side (rounded down to the nearest 0.1 metre for random length logs or logs where the Purchaser has requested lengths cut in 0.1m steps, and to the nearest 0.3 metre for logs for which preset lengths have been agreed and for which 0.3m steps are prescribed as in Field Book 9) and the top diameter under bark using the sawlog tables set out in forestry commission booklet no 31 or other such tables as may amend or replace them from time to time in effect at the time of sale. The Purchaser shall provide Forestry and Land Scotland with the measured data from the sample measured Load within 2 Business Days of the sample measured Load being carried out.
- 5.9 If either party determines that the results of the sample measured Load indicate that any Fixed Conversion Factor is inaccurate or otherwise inappropriate then either party may request to amend a previously agreed or determined Fixed Conversion Factor at any time and any such determination shall be final and binding upon both parties. In the event that any such request to amend the Fixed Conversion Factors cannot be agreed (both parties acting reasonably), either party shall be entitled to terminate the Call-Off Contract with immediate effect in terms of clause 7.8 and the remaining quantity shall be deducted to the Total Contracted Quantity.
- 5.10 In carrying out any scan measured Load(s), the Purchaser shall tag and weigh each individual Load upon entering the Purchaser's premises and before passing that Load through a log scanner. The ratio of measured volume in cubic metres under bark to net weight in metric tonnes shall derive a variable conversion factor for the said Load.
- 5.11 The Purchaser shall provide Forestry and Land Scotland with a report of net weight and derived scan measured volumes for each individual Load on a frequency to be agreed between the parties (both acting reasonably), failing which agreement Forestry and Land Scotland shall be entitled to determine such frequency.
- 5.12 Forestry and Land Scotland reserve the right to require that a calibration check on any log scanner utilised by the Purchaser to carry out any scan measured Load(s) is undertaken by an independent and suitably qualified and experienced person appointed by Forestry and Land Scotland.
- 5.13 If any calibration check undertaken pursuant to clause 5.12 identifies any irregularities and / or anomalies with a log scanner utilised by the Purchaser to carry out any scan measured Load(s), Forestry and Land Scotland reserve the right to amend a previously agreed or determined Fixed Conversion Factor at any time or to determine an alternative methodology

for establishing the volume of the Products to be purchased and sold pursuant to this Agreement and any such amended Fixed Conversion Factor or alternative methodology shall be final and binding upon the Purchaser.

- 5.14 The Purchaser shall act reasonably and in good faith in carrying out a sample measured Load or a scan measured Load and shall ensure that all equipment used by the Purchaser for the purposes of carrying out a sample measured Load or a scan measured Load is calibrated and operated in accordance with Applicable Law and Good Industry Practice.
- 5.15 In the event that Forestry and Land Scotland considers that any amendment by Forestry and Land Scotland of a previously agreed or determined Fixed Conversion Factor in terms of this clause 5 has become necessary as a consequence of wilful default or negligence on the part of the Purchaser, then Forestry and Land Scotland shall be entitled to:
- 5.15.1 suspend the Call-Off Contract and / or this Agreement and the Purchaser's rights to uplift and remove Products in terms hereof for such period as Forestry and Land Scotland may determine; or
- 5.15.2 terminate the Call-Off Contract and / or this Agreement with immediate effect in terms of clause 7.8 and the remaining quantity shall be lost to the Total Contracted Quantity.

## 6 RISK AND PROPERTY

- 6.1 The risk in the Products shall pass to the Purchaser immediately upon the commencement of loading and the Purchaser shall be responsible to Forestry and Land Scotland for any loss or damage to or caused by the Products from such date as a result of any act or omission by the Purchaser or its employees, agents, contractors, sub-contractors or the employees of any of them.
- 6.2 Notwithstanding the passing of risk under Clause 6.1 above, unless and until the Purchaser shall have paid Forestry and Land Scotland all sums due pursuant to this Agreement property in and title to all the Products purchased and sold shall remain with Forestry and Land Scotland and the following provision of this Clause shall be applicable:-
- 6.2.1 the Purchaser grants to Forestry and Land Scotland an irrevocable licence to enter the Purchaser's premises or any other premises in the occupational control of the Purchaser where the Products are or are believed by the Purchaser or Forestry and Land Scotland to be located and to inspect and/or remove the Products at any time while they remain Forestry and Land Scotland's property. In the event that any of the Products are no longer in the occupational control of the Purchaser or its employees, agents, contractors, sub-contractors or the employees of any of them, the Purchaser shall use its best endeavours to facilitate the inspection and/or removal of the Products by Forestry and Land Scotland at any time while they remain Forestry and Land Scotland's property. All costs incurred by

Forestry and Land Scotland in repossessing the Products whether or not they are still under the control of the Purchaser shall be borne by the Purchaser; and

- 6.2.2 the Purchaser shall immediately notify Forestry and Land Scotland if the Purchaser (or its directors) intend to present a petition for the making of an administration order or a winding-up petition or if the Purchaser (or its directors) is aware of any such intention on the part of any of the Purchaser's creditors or if any of the other circumstances specified in Clauses 7.9.1 to 7.9.5 inclusive are to the Purchaser's knowledge considered likely to arise.

## 7 DURATION AND TERMINATION

- 7.1 This Agreement and all linking Call-Off Contracts shall come into force on the Commencement Date(s) and time is of the essence.
- 7.2 The option of any period of extension to this Agreement is based on production forecasting estimates. Where it is evident that continuation of the Total Contracted Quantity for the same specification and period is unsustainable, Forestry and Land Scotland reserve the right to apply a breakout clause or offer an extended period of a lesser term and/or a reduced Annual Contracted Quantity. In such circumstances Forestry and Land Scotland shall provide 6 month notice of intention, and furthermore in the event of any contract termination for the reasons pertaining to this clause 7.2 Forestry and Land Scotland shall not be considered to be in breach of contract.
- 7.3 In the event that access and/or egress to or from the Stacking Sites and / or Authorised Access Routes has been curtailed for a Call-Off Contract as a consequence of any breach by the Purchaser of its obligations in terms of clause 3.13 or any closure of the whole or any part of an Authorised Access Route in terms of clause 3.14 except in cases where damage has resulted from the wilful, reckless or negligent actions or omissions of the Purchaser, any Purchaser Representative, Forestry and Land Scotland will agree to such extension of the duration of the Call-Off Contract and applicable timescales provided for in the Call-Off Contract as is reasonable and to a new Call-Off End Date, provided always that the Call-Off End Date shall not be extended, whether by one or more extensions, for a period of more than three months without the prior written approval of the head of marketing and sales of Forestry and Land Scotland.
- 7.4 If either party wishes to change the Call-Off End Date, that party must notify the other party in writing a minimum of ten Business Days before the applicable Call-Off End Date to discuss the change. Forestry and Land Scotland shall have absolute discretion whether to refuse such request or grant the same on such terms as Forestry and Land Scotland shall think fit. Agreement to change the Call-Off End Date shall not be unreasonably withheld by Forestry and Land Scotland, provided always that the Call-Off End Date shall not be extended, whether by one or more extensions, for a

period of more than three months without the prior written approval of the Head of Marketing and Sales of Forestry and Land Scotland.

- 7.5 Should the amended Call-Off End Date elapse and any Products remain at a Stacking Site and have not been uplifted and removed by the Purchaser in accordance with the terms of a Call-Off Contract then Forestry and Land Scotland shall have the right to invoice at roadside for the full and final quantity of Products that Forestry and Land Scotland has made available for uplift and removal by the Purchaser in terms of this Agreement.
- 7.6 Where the Purchaser fails to pay in full by the stated due date for payment the raised invoice, or has paid in full the raised invoice but has failed to uplift and remove all remaining Products made available for uplift at any Stacking Site(s) within 1 month of the stated due date, Forestry and Land Scotland reserve the right to recover all such Products and make them available for resale, in which case the Purchaser shall on demand indemnify and keep indemnified Forestry and Land Scotland in respect of any losses, costs, expenses or other liabilities suffered or incurred by Forestry and Land Scotland as a result of the relevant Products being sold at a price lower than the Price that would have been payable by the Purchaser in respect of such Products in terms of this Agreement
- 7.7 Any change to the End Date of a Call-Off Contract shall be recorded in an addendum to this Agreement, prepared by Forestry and Land Scotland and issued to the Purchaser within 2 Business Days following discussion. The Purchaser shall have 7 Business Days to respond, failing which the Purchaser will be deemed to have accepted the change to the Call-Off End Date.
- 7.8 Forestry and Land Scotland shall be entitled forthwith to terminate this Agreement with immediate effect by written notice to the Purchaser if the Purchaser or any Purchaser Representative commits any material breach of this Agreement.
- 7.9 Either party shall be entitled forthwith to renegotiate (in the case of clause 7.9.4) or terminate this Agreement by written notice to the other if:-
- 7.9.1 the holder of any security takes possession or a receiver is appointed over any of the property or assets of that other party;
  - 7.9.2 that other party makes any voluntary arrangement with its creditors or becomes subject to any administration order;
  - 7.9.3 that other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement); or
  - 7.9.4 that part of the forest covered by this Agreement from which the Products are to be produced is the subject of serious fire or serious

windblow damage such that the Products cannot viably be produced so as to be available on the relevant Stacking Sites;

- 7.9.5 that other party ceases to carry on business.
- 7.10 Forestry and Land Scotland shall be entitled to terminate this Agreement on giving 3 months written notice in the event of a breach of any term of this Agreement, not being a breach referred to in Clauses 7.8 or 7.9 above, save that in the case of a Remediable Breach (as that expression is defined in Clause 7.11) the Purchaser shall, following receipt of a written notice giving particulars of the Remediable Breach and requiring it to be remedied within a stated period, so remedy that Remediable Breach; if the Purchaser does not remedy the Remediable Breach within that period or within that period commits a second similar Remediable Breach, Forestry and Land Scotland shall be entitled to terminate this Agreement forthwith.
- 7.11 A breach shall be considered to be a “**Remediable Breach**” if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that in respect of that matter Forestry and Land Scotland has in its absolute discretion agreed time of performance shall no longer be of the essence).
- 7.12 Upon termination of this Agreement whether by written notice or expiry of time, the Purchaser shall immediately cease the removal of Products but Forestry and Land Scotland may, at its discretion, allow the Purchaser a further period in which to remove any Products on payment for them.
- 7.13 On the later of termination or expiry of any further period for removal of the Products granted by Forestry and Land Scotland in terms of clause 7.12, any Products remaining on the Forest and Land shall, if title has passed to the Purchaser, vest in and become the property of Forestry and Land Scotland. Forestry and Land Scotland will be entitled either to retain or resell any Products both on an open market basis which have been paid for (“the **Retained Products**”) and provided that any other claims against the Purchaser arising in relation to the subject matter of this Agreement have been settled, Forestry and Land Scotland shall reimburse to the Purchaser the lesser of the remainder of any sums received from the Purchaser for any Retained Products and/or received on reselling any Retained Products less all costs, expenses, fees and losses directly and naturally resulting in the ordinary course of events. In the event of such costs and losses exceeding the total sum received by Forestry and Land Scotland for the Retained Products the Purchaser shall on demand pay to Forestry and Land Scotland the amount by which said costs and losses exceed said total sum.
- 7.14 Within two months of the termination of this Agreement the Purchaser shall remove any buildings, erections or equipment the Purchaser may have placed on the Forest and Land and in respect of which there is no occupancy agreement with Forestry and Land Scotland. Should the Purchaser fail to remove such buildings, erections or equipment within the time specified, Forestry and Land Scotland may retain or remove and



dispose of them as it thinks fit and the Purchaser shall on demand reimburse Forestry and Land Scotland for all costs incurred in their removal and disposal and making good any damage resulting therefrom.

7.15 The right to terminate this Agreement pursuant to Clause 7 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

7.16 It is hereby agreed that the Purchaser will have access to the Work Site as a licensee only and it will not at any time take possession or occupation nor acquire any rights to security over said areas. This licence shall not be given to create a tenancy or any relationship of landlord or tenant and shall save where terminable earlier pursuant to the terms of this Agreement or as may otherwise be agreed in writing subsist only until the expiration of the period provided in clause 7.12.

## 8 **CALL-OFF CONTRACT PRICE(S)**

8.1 The method to determine Price(s) for a Call-Off Contract shall be as specified in Schedule Part 1 of this Agreement.

8.2 The Prices to be paid for the Products and the period to which they apply shall be as specified in Part 1 of the Schedule of each Call-Off Contract and any subsequent addendum specific to a Call-Off Contract.

8.3 In the event that both parties are unable to reach agreement on a Call-Off Contract price at the start of each year, or at the time of a scheduled price review, Forestry and Land Scotland reserve the right to withdraw all or part of the Call-Off Contract quantity from the Total Contracted Quantity as per this Agreement and place on the open market. Subject to clause 8.4, the quantity withdrawn shall be lost to the overarching Total Contracted Quantity.

8.4 Pursuant to clause 8.3, where the withdrawn quantity has failed to sell on the open market Forestry and Land Scotland will offer to reinstate the equivalent quantity to the overarching Total Contracted Quantity at a price above that of the highest bid price, subject to agreement by the Purchaser. Should the Purchaser decline the offer of reinstatement or agree to a price above that of the highest bid price, the quantity withdrawn shall be deducted from to the Total Contracted Quantity.

8.5 Where Forestry and Land Scotland has failed to make available the agreed target quantities of Products and the Call-Off Contract is 20% or more behind profile at the end of the 6-monthly period, the Purchaser may request to defer a scheduled price adjustment on a Call-Off Contract should it be established that an adjusted price would result in significant financial loss.

8.6 Where the Purchaser has failed to uplift available roadside stock and the Call-Off Contract is 20% or more behind profile at the end of a 6-monthly period, Forestry and Land Scotland may request to defer a scheduled price

adjustment on a Call-Off Contract should it be established that an adjusted price would result in significant financial loss to Forestry and Land Scotland.

- 8.7 Where the Purchaser has failed to uplift all available and accessible roadside stock on a Call-Off Contract by the end of a 6-monthly period, Forestry and Land Scotland reserves the right to withdraw all or part of the equivalent quantity from the Total Contracted Quantity and place on the open market. The quantity withdrawn shall be deducted from the Total Contracted Quantity.
- 8.8 Pursuant to clause 8.7, should Forestry and Land Scotland agree to carry forward all or part of the available and accessible Products into the next 6 month period Forestry and Land Scotland reserves the right to retain the Call-Off Contract price from the previous period or invoice at roadside for the agreed quantity.
- 8.9 Where Forestry and Land Scotland have failed to produce the agreed target quantity to roadside in sufficient time to complete uplift on a Call-Off Contract, or if the allocated Products have been inaccessible, the Purchaser shall be granted the option to carry forward or decline all or part of the outstanding quantity into the next 6-monthly period. Should the Purchaser agree to carry forward all or part of the outstanding quantity into the next period, the Purchaser reserves the right to retain the Call-Off Contract price from the previous period.
- 8.10 Where the Purchaser has reached the 6-monthly uplift target ahead of the period Call-Off End Date, and is seeking to continue uplift of available and accessible Products, Forestry and Land Scotland reserve the right to negotiate an earlier price adjustment or apply a retrospective price adjustment.

## 9 PAYMENT WEIGHTS AND INVOICING

- 9.1 The Purchaser shall pay the Price in relation to each Load either:
- 9.1.1 pursuant to an invoice raised by Forestry and Land Scotland in accordance with terms of this clause 9; or
  - 9.1.2 pursuant to a self-billing arrangement entered into between the Purchaser and Forestry and Land Scotland in terms of clause 9.2.
- 9.2 If the Purchaser wishes to make payments to Forestry and Land Scotland under this Agreement by way of a self-billing arrangement in terms of clause 9.1.2, then it shall:
- 9.2.1 enter into a self-billing agreement with Forestry and Land Scotland on such terms as Forestry and Land Scotland may from time to time require and comply at all times with the terms of such self-billing agreement;

- 9.2.2 comply at all times with Applicable Law and all applicable requirements of HM Revenue & Customs in respect of such self-billing arrangement; and
- 9.2.3 comply at all times with applicable FSC and PEFC chain of custody requirements in respect of such self-billing arrangements.
- 9.12 The weighing of each individual Load or part thereof shall be at the Purchaser's expense and the payment weight in relation to each Load shall be notified by the Purchaser to Forestry and Land Scotland within ten Business Days following uplift and removal of the relevant Load.
- 9.4 The Purchaser shall notify Forestry and Land Scotland of the relevant payment weights either by electronic data transfer, which the Purchaser shall ensure are compatible with Forestry and Land Scotland data standards, or through the return of weighbridge tickets / weighbridge data reports to a designated Forestry and Land Scotland office or nominated Forestry and Land Scotland email account and must include gross vehicle weight and net weight in metric tonnes and the date / time stamp of weighing for each individual Load, together with such other information as Forestry and Land Scotland may reasonably require.
- 9.5 Pursuant to clause 9.4, the payment weight for invoicing and self-bill purposes shall initially be derived from the net weight of Products for each individual Load over a weighbridge, which weighbridge shall comply with all Applicable Law and Good Industry Practice.
- 9.6 In respect of any cubic metre volume sales, and for the purpose of deriving a measured volume for invoicing or self-bill payment, the net weight shall be converted to cubic metres under bark (m3ub) by applying a fixed conversion factor(s) or an alternative volume measurement system which in either case is agreed between the Purchaser and Forestry and Land Scotland for the specified Products as provided in clause 5.2 .
- 9.7 Where the Purchaser has no access to a weighbridge for the purposes of clause 9.5, the parties shall agree in writing an alternative method for determining the payment weight for invoicing and self-bill purposes, which alternative method may include, but shall not be limited to, print out from an appropriate on-board weighing device or a consistent payment weight for each individual Load. In the event that an alternative method for determining the payment weight for invoicing and self-bill purposes is not agreed between the parties prior to the Call-Off Start Date, then Forestry and Land Scotland shall be entitled at its sole discretion (acting reasonably) to determine such alternative method for determining the payment weight for invoicing and self-bill purposes. The Purchaser shall comply with any alternative method for determining the payment weight for invoicing and self-bill purposes as determined or amended by Forestry and Land Scotland in terms of this clause 9.7.

- 9.8 Where the Purchaser fails to notify payment weights to Forestry and Land Scotland or raise a self-bill invoice within the period specified in clause 9.3, Forestry and Land Scotland shall be entitled to issue a report to the Purchaser in respect of any outstanding transactions and serve notice of its intent to invoice the Purchaser in respect of the relevant Load(s) after 20 Business Days following uplift and removal of such Load(s).
- 9.9 Where, following the service by Forestry and Land Scotland of a notice of intent to invoice in terms of clause 9.8, the Purchaser has failed to notify payment weights or raise a self-bill invoice after 20 Business Days following removal of the relevant Load(s), Forestry and Land Scotland shall be entitled to invoice the Purchaser or require the Purchaser to raise a self-bill invoice which, in either case, shall be based upon a Load weighing 25 tonnes, this being the full and final payment weight.
- 9.10 Pursuant to clause 9.9, and specific to self-bill arrangements, if the Purchaser fails to raise a self-bill invoice Forestry and Land Scotland shall be entitled to suspend the Call-Off Contract and the Purchaser's rights to uplift and remove Products in terms hereof for such period as Forestry and Land Scotland may at its sole discretion determine, which period of suspension shall subsist unless and until the matter has been resolved to the satisfaction of Forestry and Land Scotland. During any period of suspension of the Call-Off Contract and the Purchaser's rights to uplift and remove Products in terms of this clause 9.10, the Purchaser shall not and shall procure that the Purchaser's Representative shall not uplift or remove any Products or enter or otherwise access the Forest and Land for the purposes of uplift or removal of any Products. In the event that the Purchaser or any Purchaser Representative uplifts or removes any Products or enters or otherwise accesses the Forest and Land for the purposes of uplift or removal of any Products in breach of the terms of this clause 9.10, Forestry and Land Scotland shall be entitled to terminate the Call-Off Contract with immediate effect in terms of clause 7.7 and the remaining quantity shall be deducted from the Total Contracted Quantity.
- 9.11 Forestry and Land Scotland reserve the right to require that a calibration check or other inspection on any weighbridge utilised by the Purchaser to carry out any scan measured Load(s) is undertaken by an independent and suitably qualified and experienced person appointed by Forestry and Land Scotland.
- 9.12 If any calibration check or inspection undertaken pursuant to clause 9.11 identifies any irregularities and / or anomalies with a weighbridge utilised by the Purchaser, Forestry and Land Scotland may, without prejudice to any other remedies available to it under this Agreement or otherwise, by notice suspend this Agreement and the Purchaser's rights to uplift and remove Products in terms hereof for such period as Forestry and Land Scotland may at its sole discretion determine, which period of suspension shall subsist until the Purchaser has remedied any such irregularities and / or anomalies to the reasonable satisfaction of Forestry and Land Scotland. During any period of suspension of this Agreement and the Purchaser's rights to uplift and

remove Products in terms of this clause 9.12, the Purchaser shall not and shall procure that the Purchaser's Representatives shall not uplift or remove any Products or enter or otherwise access the Forest and Land for the purposes of uplift or removal of any Products. In the event that the Purchaser or any Purchaser Representative uplifts or removes any Products or enters or otherwise accesses the Forest and Land for the purposes of uplift or removal of any Products in breach of the terms of this clause 9.12, Forestry and Land Scotland shall be entitled to terminate this Agreement with immediate effect in terms of clause 7.8, 7.9. and 7.10.

## 10 CREDIT ACCOUNTS AND PRE-PAID INSTALMENTS

- 10.1 If the Purchaser has an Authorised Credit Facility, Forestry and Land Scotland shall render invoices to the Purchaser in accordance with the terms of clause 9 and track the estimated value of Products removed pending invoice (the "**Pipeline Value**"), together being the maximum amount which may be owed by the Purchaser to Forestry and Land Scotland at any time under this Agreement and any other agreement between the Purchaser and Forestry and Land Scotland. The maximum amount owed shall not exceed the Authorised Credit Limit as determined by Forestry and Land Scotland.
- 10.2 If the Purchaser does not have an Authorised Credit facility, the Purchaser shall be required to make pre-paid instalments to Forestry and Land Scotland on a frequency to be agreed and invoiced in advance of any removal of Products. The Purchaser shall not be authorised to remove any Products until the agreed instalment has been paid in full.
- 10.3 If the limit of any Authorised Credit Facility referred to in clause 10.1 is, or is likely to be exceeded for any reason (of which Forestry and Land Scotland shall be sole judge), then:
- 10.3.1 the Purchaser shall, in respect of any invoices rendered to the Purchaser in terms of this clause 10, pay to Forestry and Land Scotland on demand an amount which is equal to the amount by which the limit of any Authorised Credit Facility referred to in clause 10.1 has been, or is likely to be, exceeded; and
- 10.3.2 if the value of any invoices rendered to the Purchaser in terms of this clause 10 is less than the amount by which the limit of any Authorised Credit Facility referred to in Clause 10.1 has been, or is likely to be, exceeded, Forestry and Land Scotland shall be entitled to raise an invoice for such amount as it shall determine at its sole discretion is necessary to secure payments in relation to the Pipeline Value.
- 10.4 The Purchaser shall pay any amount demanded in terms of clause 10.3.1 or any invoice raised in terms of clause 10.3.2 within three Business Days of such demand or of the date of such invoice.
- 10.5 In the event that the Purchaser fails to make any payment it is required to make in terms of clause 10.4, Forestry and Land Scotland may, without

- prejudice to any other remedies available to it under this Agreement or otherwise, notify the Purchaser that the Authorised Credit Facility will be temporarily suspended and as a result no Products may be removed under this Agreement or any other agreement between Forestry and Land Scotland and the Purchaser unless and until the Purchaser has made such payment and Forestry and Land Scotland have confirmed in writing that the Authorised Credit Facility has been reinstated
- 10.6 In the event that Forestry and Land Scotland issues a notice to the Purchaser under Clause 10.5, the Purchaser will not thereby be relieved of any of the Purchaser's obligations under this Agreement, including, without prejudice to the generality of the foregoing, the obligation to remove the Total Contracted Quantity on or before the End Date.
- 10.7 Forestry and Land Scotland, from time to time and at its own discretion, reserve the right to request management accounts for the most recent trading year and undertake a credit risk assessment to determine a maximum amount for any Authorised Credit Facility. Forestry and Land Scotland also reserve the right to seek the latest credit recommendation from any such credit agency and use that information to inform the assessment
- 10.8 Should management accounts be unavailable, the Purchaser shall be required to provide financial information as an interim measure, to include;
- 10.8.1 Profit and loss: Total figures for; turnover, cost of sales, profit before tax; and
- 10.8.2 Balance sheet: Totals for, inventory, current assets (with trade debtors split out), current liabilities (with trade creditors split out).
- 10.9 Should the Purchaser decline the request for management accounts or financial information as described in 10.7 and 10.8, Forestry and Land Scotland reserve the right to determine the maximum amount of any Authorised Credit Facility based on the financial recommendation of any credit agency and / or other financial information and payment history deemed relevant by Forestry and Land Scotland.
- 10.10 Pursuant to 10.7, 10.8 and 10.9, should the limit of any Authorised Credit Facility be reduced, the Purchaser will be required to agree a payment plan and timeline with Forestry and Land Scotland for any sums on account over and above the revised credit limit. Where the Purchaser has failed to agree a payment plan, Forestry and Land Scotland may, without prejudice to any other remedies available to it under this Agreement or otherwise, notify the Purchaser that no Products may be removed under this or any other agreement between Forestry and Land Scotland and the Purchaser until the Purchaser has made such payment as Forestry and Land Scotland shall, in its sole discretion determine.
- 11 **PAYMENT OF INVOICES**

- 11.1 Payment to Forestry and Land Scotland of invoices in respect of Products shall be made by the Purchaser in respect of each invoice / self-bill invoice by the payment due date as stated on the invoice.
- 11.2 Payment for the total amount of each invoice shall be made to Forestry and Land Scotland in immediately cleared funds, without deduction for or on account of any set off or counterclaim or (other than as required by law) any tax to such account as may be specified by Forestry and Land Scotland.
- 11.3 In the event that the Purchaser fails to pay in full any invoiced sums due by the Purchaser to Forestry and Land Scotland within 15 Business Days of the payment due date as stated on the invoice, Forestry and Land Scotland may, without prejudice to any other remedies available to it under this Agreement or otherwise, by notice suspend the Call-Off Contract and the Purchaser's rights to uplift and remove Products in terms hereof for such period as Forestry and Land Scotland may at its sole discretion determine, which period of suspension shall subsist until the Purchaser has paid in full any invoiced sums. During any period of suspension of this Agreement and the Purchaser's rights to uplift and remove Products in terms of this clause 11.3, the Purchaser shall not and shall procure that the Purchaser's Representatives shall not uplift or remove any Products or enter or otherwise access the Forest and Land for the purposes of uplift or removal of any Products.
- 11.4 In the event that Forestry and Land Scotland issues a notice of suspension to the Purchaser under clause 11.3, the Purchaser will not, for the avoidance of any doubt, thereby be relieved of any of the Purchaser's obligations under this Agreement including, without prejudice to the generality of the foregoing, the obligation to uplift and remove the Total Contracted Quantity before the End Date.

## 12 **ASSIGNATION**

- 12.1 In the event of a reorganisation of Forestry and Land Scotland or any of its commercial trading activities that results in Forestry and Land Scotland's business and activities being implemented, performed, carried out, effected or undertaken by a new body ("the Reorganised Forestry and Land Scotland") Forestry and Land Scotland shall, on giving written notice to the Purchaser, be entitled to assign all of its rights and/or transfer all of its obligations under this Agreement to the reorganised Forestry and Land Scotland which shall be entitled to enforce those rights as if this Agreement were made between the Purchaser and the reorganised Forestry and Land Scotland.
- 12.2 The Purchaser shall not assign the Purchaser's rights or liabilities under this Agreement without the consent in writing of Forestry and Land Scotland, which consent shall not unreasonably be withheld for the purposes of this clause 12 but without limitation it would be reasonable for Forestry and Land Scotland to withhold its consent where the Assignee appears to Forestry and Land Scotland in its reasonable opinion to be a person or organisation to be

unlikely to be able to fulfil the Purchaser's obligations under this Agreement if assigned.

### 13 **FORCE MAJEURE**

13.1 If either party is unable to perform all or any of their obligations under this Agreement by reason of Force Majeure then the party affected shall within 5 Business Days of the event or circumstance giving rise to Force Majeure give written notice to the other of its inability to perform this Agreement and the reasons for the same.

13.2 On the giving of such notice by either party then the liability of the party serving notice to make available or take the Products as appropriate in accordance with this Agreement shall be suspended and that party shall not be liable to meet the obligation to make available or accept the Total Contracted Quantity but shall continue to make available or accept such Products in such amount as can be made available or accepted in the circumstances. As soon as circumstances permit the full provisions of this Agreement shall be resumed and the time provided for between the Start Date and the End Date as set out in Part I of the Schedule shall be extended for a period equivalent in working hours and conditions to the period of delay or suspension thereby caused.

### 14 **ARBITRATION**

14.1 Clauses 14.2 to 14.4 inclusive shall apply in relation to any dispute or difference arising between the parties which involves the interpretation or construction of this Agreement or the Price or the rights or liabilities of the parties. Any dispute or difference arising between the parties and which involves such matter as the Total Contracted Quantity as defined in Part 1 of the Schedule, the suitability of Authorised Access Routes, Cutting Specification in accordance with Clause 4.1 and Force Majeure shall be referred to the Inspector. In deciding any question referred to him hereunder the Inspector shall act on his own skilled judgement after making any inspection or enquiries which he may think necessary. The Inspector's decision on any such question shall be final and binding on both parties. The costs and charges of the Inspector shall be paid by the parties in equal shares. Both parties shall provide the Inspector with any documentation or assistance he may require to discharge his functions under this clause 14.

14.2 Save as provided in clause 14.1 if there is any question, difference or dispute which may arise concerning the construction, meaning or effect of this Agreement or concerning the rights and liabilities of the parties, then they shall use all reasonable efforts to settle it by way of negotiations.

14.3 If the parties fail to settle the matter within a reasonable period, then either party may refer it to a single arbiter or arbitrator who shall be agreed between the parties. If the parties fail to agree on the appointment of an arbiter or arbitrator in accordance with this clause, then within 1 month of the request by one party to the other that the matter be referred to arbitration



either party may apply to president for the time being of the Chartered Institute of Arbitrators to make an appointment.

- 14.4 The decision of the arbitrator shall be final and binding upon the parties and the costs of the arbitration shall be within the arbitrator's award.

## 15 **INSURANCE**

- 15.1 Throughout the term of this Agreement (and during any further period granted by Forestry and Land Scotland for the removal of Products after the Call-Off End Date), the Purchaser shall either at its own expense maintain or shall procure that any Purchaser's Representative responsible for uplift, removal and haulage of Loads shall maintain in force, with an insurance company approved by Forestry and Land Scotland, insurance against all loss, damage and insurable risks of third party liability up to a minimum of £10,000,000 (ten million pounds) per claim arising out of the works, operations, processes and other acts and omissions pursuant to this Agreement of the Purchaser and of any agent, contractor, or sub-contractor engaged by it in connection with the exercise of the Purchaser's Representatives rights or the performance of its obligations under this Agreement (and of its and their respective employees). The Purchaser's obligations under this sub-clause in relation to any agent, contractor, or sub-contractor (and their respective employees) shall be deemed to be satisfied to the extent that the Purchaser procures that such agent, contractor, or sub-contractor has effected insurance (with an insurance company and in an amount acceptable to Forestry and Land Scotland) which provides the same level of protection to Forestry and Land Scotland as if such insurance had been effected by the Purchaser. Furthermore, Forestry and Land Scotland may, in its discretion, agree that the Purchaser's obligations under this sub-clause in relation to itself and its employees shall be deemed to be satisfied in the event that it is demonstrated to the satisfaction of Forestry and Land Scotland that an agent, contractor, or sub-contractor has effected insurance (with an insurance company and in an amount acceptable to Forestry and Land Scotland) which provides the same level of protection to Forestry and Land Scotland as if such insurance had been effected by the Purchaser. Whenever required by Forestry and Land Scotland, the Purchaser shall produce to Forestry and Land Scotland the policy or policies relating to all such insurances and the receipts for the then current year's premiums in respect of them. The maintenance of insurance in accordance with the provisions of this sub-clause shall not serve to limit or exclude any liability of the Purchaser to Forestry and Land Scotland in delict or negligence or in respect of any breach of this Agreement.
- 15.2 The Purchaser shall not do or permit or suffer to be done on the Stacking Sites or the Authorised Access Routes or otherwise anything that may render the policy or policies of insurance effected in accordance with Clause 15.1 void or voidable.
- 15.3 Further, if at any time Forestry and Land Scotland can demonstrate that it is normal for third party liability insurance to be maintained for a sum greater

than the sum referred to above, the Purchaser must within 30 days after notice from Forestry and Land Scotland increase their insurance to the amount specified in such notice (such sum to be based on the then forestry industry norm).

## 16 INDEMNITY

- 16.1 The Purchaser hereby undertakes to indemnify and hold harmless Forestry and Land Scotland from and against any and all losses, costs, damages, liabilities and expenses suffered or incurred by Forestry and Land Scotland directly or indirectly as a result of: any negligence of the Purchaser; any breach of this Agreement by the Purchaser; or any act or omission of the Purchaser or of any Purchaser Representatives in connection with the carrying out of this Agreement, and against any and all actions, suits, proceedings, claims, demands, assessments and judgements with respect to any of the foregoing.
- 16.2 The Purchaser, in its capacity as forest works manager for the haulage of timber and in accordance with applicable FISA Safety Guides, is responsible for assessing and reporting any and all risks associated with and/or arising on the Authorised Access Routes and Stacking Sites for each Call-Off Contract. Forestry and Land Scotland shall provide a non-exclusive list of hazards on the Authorised Access Routes and Stacking Sites from which risks may arise and these shall be given in Schedule Part 4 of the Call-Off Contract. The Purchaser shall hold or, as provided in clause 15.1, shall ensure the haulage contractor(s) authorised by the Purchaser to access the Work Site for the uplift and removal of the Products shall hold, minimum third party liability indemnity cover of £10,000,000 (ten million pounds) unless a larger sum is specified in Part 1 of the Schedule of the Call-Off Contract.

## 17 CONDITIONS

- 17.1 This Agreement and the sale and purchase contemplated hereunder are subject to the following conditions, and the Purchaser shall comply and shall ensure that the Purchaser's employees, agents, contractors, sub-contractors or the employees of any of them, will comply with and observe the following conditions and shall produce to Forestry and Land Scotland if requested such evidence as Forestry and Land Scotland may require to show that the Purchaser has satisfied this provision.
- 17.2 The Purchaser shall adopt a reasonable method of working such that:
- 17.2.1 the Products are removed in an orderly and workmanlike manner and in accordance with: Good Industry Practice; applicable FISA guidelines in relation to stacking; and applicable FLS Policies and Procedures;
  - 17.2.2 the Products and any debris resulting from removal thereof are kept clear of all existing buildings, archaeological sites, walls, gates, fences, hedges, drains, watercourses, roads, rides and tracks;

- 17.2.3 all necessary precautions are taken to prevent wilful, reckless or negligent damage to any and all standing trees remaining on the Work Site or in any neighbouring woods or plantations; and
  - 17.2.4 all necessary precautions are taken to prevent wilful, reckless or negligent damage without limitation to any and all buildings, archaeological sites, walls, gates, fences, hedges, drains, watercourses including groundwater, roads, rides, tracks, vegetation, man, living organisms or the environment; and
  - 17.2.5 the Purchaser shall be liable to Forestry and Land Scotland for any damage to Forestry and Land Scotland's property due to any act or default of the Purchaser, and shall make good any such damage as soon as reasonably practicable;
- 17.3 If the Purchaser shall fail to comply with any of the provisions in Clause 17.2 above then, within ten Business Days of receiving written notice from Forestry and Land Scotland, or after such shorter time as may be reasonable and if the proposed work is urgently required then, Forestry and Land Scotland may make good such damage and do all such necessary work. In this event the cost incurred by Forestry and Land Scotland shall be reimbursed immediately by the Purchaser upon written demand by Forestry and Land Scotland.
- 17.4 The Purchaser shall ensure that the Purchaser and all Purchaser Representatives are at all times the persons responsible for complying with all aspects of The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013.
- 17.5 The Purchaser shall and shall procure that all Purchaser Representatives shall at all times comply with all Applicable Law, Environmental Law and Health and Safety Law and shall, without prejudice to the generality of the foregoing, ensure that:
- 17.5.1 At no time shall any Purchaser Representative work within 2 x boom length + the product, equivalent to 50 metres safe distance, of an overhead electric or power line as specified in the FISA Forest Haulage Safety Manual 2018 or any subsequent version. Forestry and Land Scotland shall have the right at all times to require that any Purchaser Representative working within 2 x boom length + the product, equivalent to 50 metres safe distance, of an overhead electric line shall stop work immediately. Purchaser Representatives on the Forest and Land that include overhead electric lines must be in possession of the relevant applicable FISA Safety Guides or the equivalent from any body that from time to time replaces FISA. Any overhead electric lines in the area covered by this Agreement will be indicated on the Road Access Map for each Call-Off Contract. The agent responsible for any overhead electric line indicated on the Road Access Map shall be listed in Schedule Part 3 of the Call-Off Contract. Forestry and Land Scotland will ensure that the Products

are stacked outwith 2 x boom length + the product, equivalent to 50 metres, of any overhead electric or power lines at all times.

- 17.6 The Purchaser shall undertake best available practices not entailing excessive cost in respect of any activities which may endanger the general public at all times whilst on the Forest and Land and in and around the Authorised Access Routes and Stacking Sites. Forestry and Land Scotland shall in accordance with Clause 16.2, estimate the potential frequency of incursions to the Authorised Access Routes and Stacking Sites by the general public and this shall be indicated in Schedule Part 3 of the Call-Off Contract .
- 17.7 During the pine shoot beetle breeding season, from May to September inclusive in any year Forestry and Land Scotland shall have the right to peel any logs of pine which have not been removed by the Purchaser in accordance with the terms of this Agreement and to recover the costs thereof from the Purchaser.
- 17.8 The Purchaser shall not light fires on the Forest and Land without the express written permission of Forestry and Land Scotland in relation to each individual fire and shall take all reasonable and proper precautions under the direction of Forestry and Land Scotland to prevent the risk of fire on the Work Site or their operations causing fires on or spreading to any adjoining or surrounding ground.
- 17.9 Forestry and Land Scotland reserves the right to prohibit the use of chain saws or any other machines on the Forest and Land in an emergency or at times when their use would, in Forestry and Land Scotland's opinion, cause a nuisance to the general public or to local residents. When required, save in an emergency, such prohibition shall be stated in schedule Part 3 of the Call-Off Contract and shall not be regarded as justifying any changes in the terms, conditions or prices in this Agreement.
- 17.10 If for some reason not foreseen at the time this Agreement was made Forestry and Land Scotland is required to stop all felling for part or all of the time between the Call-Off Start Date and the Call-Off End Date, Forestry and Land Scotland shall, save in an emergency write to the Purchaser requesting a meeting to discuss an amendment to the terms of this Agreement. Any new terms reasonably agreed as a result of that or any subsequent meeting shall be incorporated in to the Call-Off Contract. Where this clause 17.10 applies, Forestry and Land Scotland shall be deemed not to be in breach of this e Agreement.
- 17.11 No animal, except those employed to remove Products, shall be taken or allowed on the Forest and Land by the Purchaser without the written consent of Forestry and Land Scotland. Any animals employed to remove Products or brought on to the Forest and Land with Forestry and Land Scotland's consent shall at all times remain the responsibility of the Purchaser and shall be kept under control at all times so as to prevent any injury to any person, property, any living organism or the environment.

- 17.12 No caravans, mobile homes, campervans or equivalent vehicle or tent shall be brought on the Forest and Land without the written consent of Forestry and Land Scotland.
- 17.13 The Purchaser shall at all times comply with all Environmental Law and any other regulation affecting the conduct of the Purchaser's business and ensure that no harm to any person, property, any living organisms or the environment may result from its acts or omissions in relation to this Agreement or from the acts or omissions of the Purchaser, its employees, agents, contractors, sub-contractors and the employees of any of them in relation to this Agreement.
- 17.14 The Purchaser shall not offer any reward, inducement, emolument or incentive whatsoever, to any person in the employment or performing a contract for services on behalf of Forestry and Land Scotland.
- 17.15 The parties shall provide all necessary safety signs (Part 4 of the Schedule of this Agreement details the location of the warning Signs) and ensure that at all times in relation to any Work Site all necessary safety signs are clearly visible and other necessary measures are taken to warn the public of dangerous works being carried out in the vicinity and to prevent the public from being exposed to any danger emanating from any Work Site with particular regard being had to likely presence of children.
- 17.16 Forestry and Land Scotland shall be entitled upon giving 24 hours notice, save in emergencies where its entitlement will have immediate effect, to veto the use by the Purchaser of any contractor or sub-contractor (in which case Forestry and Land Scotland shall inform the Purchaser of the reasons for such veto) which Forestry and Land Scotland does not consider suitable to carry out the obligations in this Agreement and the Purchaser shall convey such reasons to such contractor or sub-contractor and ensure that such contractor or sub-contractor shall immediately cease any activities and vacate the Work Site.
- 17.17 Forestry and Land Scotland shall be entitled at all times to enter the Work Site and to ensure compliance by the Purchaser, its employees, agents, contractors, sub-contractors and the employees of any of them with the provisions of this Agreement or for any other reason.
- 17.18 The Purchaser shall have regard at all times to Forestry and Land Scotland's powers and duties under the Forestry and Land Management (Scotland) Act 2018 as amended from time to time and other applicable legislation including without limitation the National Parks and Access to the Countryside Act 1959 and the Countryside Act 1968 and any relevant Local Acts and in particular without limitation Forestry and Land Scotland's duty in respect of the conservation and enhancement of natural beauty, the conservation of flora and fauna and geological or physiographical features of special interest, the protection against pollution of any water (including groundwater) and Forestry and Land Scotland's power to provide or assist in the provision of tourist, recreational or sporting facilities.

- 17.19 The Purchaser shall be responsible for and shall ensure that the Purchaser Representatives are responsible for all Biosecurity practices, including cleaning footwear, vehicles, and kit, and particularly when moving between different forests and woodlands so to avoid transferring any pest or disease from an infected site to an uninfected site.
- 17.20 The Purchaser must comply with Scottish Forestry's Biosecurity requirements for wood movement and processing licences.
- 17.21 The Purchaser must comply with any current Biosecurity initiatives set by Forestry and Land Scotland or Scottish Forestry and notified to the Purchaser from time to time whether directly or via publication on the Confor website.
- 17.22 The Purchaser must report any suspect pests or diseases to Forestry and Land Scotland and Scottish Forestry immediately upon becoming aware of the same.

## 18 **RELATIONSHIP OF THE PARTIES**

- 18.1 Nothing herein contained shall be deemed to constitute the Purchaser a partner, agent or representative of Forestry and Land Scotland and accordingly the Purchaser, as an independent contractor, hereby agrees and undertakes not without the prior written consent of Forestry and Land Scotland at any time or from time to time:
- 18.1.1 to incur or purport to incur by itself, its employees, agents, contractors, sub-contractors and the employees of any of them any liability or obligation whatsoever in name or on behalf of Forestry and Land Scotland or in any manner of way to hold itself or themselves or himself or herself out as agent for Forestry and Land Scotland or otherwise to represent itself or themselves or himself or herself as having ostensible authority to act on Forestry and Land Scotland's behalf;
- 18.1.2 in name of or on behalf of Forestry and Land Scotland to make any representation or give any warranty, whether express or implied, about Forestry and Land Scotland or the Products in any manner of way not previously authorised in writing by Forestry and Land Scotland;
- 18.1.3 to pledge or purport to pledge Forestry and Land Scotland's credit; and
- 18.1.4 to take or purport to make Forestry and Land Scotland bound as guarantor or surety in any manner of way whatsoever.

## 19 **CONFIDENTIALITY**

Each party agrees to maintain secret and confidential all information obtained from the other both pursuant to this Agreement and prior to and in

contemplation of it, to respect the other's rights in terms of this Agreement, to use the same exclusively for the purposes of this Agreement, and to disclose the same only to those of its employees and contractors pursuant to this Agreement (if any) to whom and to the extent that such disclosure is reasonably necessary for the purpose of this Agreement.

## 20 **FURTHER ASSURANCE**

The parties hereby undertake to execute all documents and do all acts and things necessary or expedient for the purpose of giving full force and effect to the provisions of this Agreement and the parties further agree to co-operate in and implement the spirit, aims and intent of the arrangements contemplated hereunder.

## 21 **WAIVER**

Any waiver by either party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision hereof.

## 22 **NOTICES**

Any notice or document required or permitted to be given or served under this Agreement may be given or served personally or by leaving the same or by sending the same by first class recorded delivery post as follows:-

- 22.1 in the case of the Forestry and Land Scotland, Forestry and Land Scotland Head Office, Great Glen House, Leachkin Road, Inverness IV3 8NW marked for attention of the Chief Executive;
- 22.2 in the case of the Purchaser at or to their address specified in Part 1 of the Schedule; or to such other address as shall have been last notified to the other party for that purpose. Any notice or document given or served by post will be deemed to have been duly given or served on the second Business Day after the letter containing same was posted; in proving that any notice or document was so given or served it will be necessary only to prove that the same was properly addressed and posted. Any notice or document given or served will deemed to have been duly given or served at the time of despatch or, if that is not during normal business hours on a Business Day, at 0900 hours on the first Business Day following the date of despatch, and in proving that any notice or document was so given or served it will be necessary only to prove that the same was properly addressed and despatched.

## 23 **MODERN SLAVERY**

- 23.1 The Purchaser undertakes, warrants and represents that:

- 23.1.1 neither the Purchaser nor any of the Purchaser Representatives:

- 23.1.1.1 has committed an offence under the Modern Slavery Act 2015 (an MSA Offence); or
  - 23.1.1.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
  - 23.1.1.3 is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- 23.1.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;
- 23.1.3 its responses to Forestry and Land Scotland's modern slavery and human trafficking due diligence questionnaire are complete and accurate; and
- 23.1.4 it shall notify Forestry and Land Scotland immediately in writing if it becomes aware or has reason to believe that it, or any of the Purchaser Representatives, have breached or potentially breached any of the Purchaser's obligations under this clause 23. Such notice shall set out full details of the circumstances concerning the breach or potential breach of Purchaser's obligations.
- 23.2 The Purchaser shall, if requested, prepare and deliver to Forestry and Land Scotland a slavery and human trafficking report setting out the steps it has taken to ensure slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

## 24 **FREEDOM OF INFORMATION**

- 24.1 The parties acknowledge that Forestry and Land Scotland is subject to the requirements of the Freedom of Information (Scotland) Act 2002 (the "2002 Act") and the Environmental Information (Scotland) Regulations 2004 (the "Regulations") and the Purchaser shall assist and co-operate with Forestry and Land Scotland to enable Forestry and Land Scotland to comply with its information disclosure requirements insofar as relating to this Agreement.
- 24.2 Forestry and Land Scotland shall be responsible for determining in its absolute discretion and notwithstanding any other provision of this Agreement whether any Information (having the meaning ascribed thereto under Section 73 of the 2002 Act) is exempt from disclosure in accordance with the provisions of the 2002 Act or the Regulations. The Purchaser acknowledges that Forestry and Land Scotland may be obliged under the 2002 Act and / or the Regulations to disclose Information in certain circumstances (a) without consulting with the Purchaser or (b) following consultation with the Purchaser and having taken its views into account provided always that Forestry and Land Scotland shall take reasonable steps where appropriate to give the Purchaser advance notice, or failing that, to draw the disclosure to the Purchaser's attention as soon as reasonably



practicable after any such disclosure. For the avoidance of doubt, for so long as Forestry and Land Scotland is constituted as an executive agency of The Scottish Ministers, Forestry and Land Scotland shall be entitled to disclose details of sales and visitor numbers in relation to Forestry and Land Scotland and to any Government Department or other Government Agency and any other related organisation and any tourist body that Forestry and Land Scotland deems appropriate.

## 25 **UKFS AND UKWAS**

- 25.1 All Forestry and Land Scotland woodlands and forests are managed in accordance with the UKFS, the reference standard for sustainable forest management in the UK.
- 25.2 The UKFS provides the basis of forestry practice for the independent, voluntary UKWAS. UKWAS reflects the requirements of the two leading global forest certification schemes, the FSC and the PEFC.
- 25.3 Forestry and Land Scotland holds the independent, voluntary UKWAS certification, providing ongoing, verified assurance that timber and wood products come from responsibly managed, sustainable forest management. UKWAS certification is additional to compliance with legislation and statute, and conformance to relevant codes of practice and good practice guidelines.
- 25.4 The Purchaser shall comply and conform and shall ensure that any of the Purchaser Representatives shall comply and conform, with UKFS and UKWAS requirements. The Purchaser accepts that any remedial breach in respect of clause 25 may impact on any such certification held by the Purchaser.

## 26 **BIOSECURITY**

- 26.1 The Purchaser shall comply and shall ensure that the Purchaser Representatives comply with and observe the following conditions and shall produce to Forestry and Land Scotland if requested such evidence as Forestry and Land Scotland may require to show that the Purchaser has satisfied this provision. Biosecurity requirements are detailed in UKFS and UKWAS. Specific Biosecurity requirements to Scotland including requirements for particular pests or diseases can be obtained from the Scottish Forestry website.
- 26.2 The Purchaser shall be responsible and shall ensure that the Purchaser Representatives are responsible for all Biosecurity practices, including cleaning footwear, vehicles, and kit, and particularly when moving between different forests and woodlands so to avoid transferring any pest or disease from an infected site to an uninfected site. All parties and the Purchaser Representatives will discuss, agree, and record Biosecurity measures for the Sale Area at the PCM
- 26.3 The Purchaser must comply with Scottish Forestry's Biosecurity requirements for wood movement and processing licences.

26.4 The Purchaser must comply with any current Biosecurity initiatives set by Forestry and Land Scotland or Scottish Forestry and notified to the Purchaser from time to time whether directly or via publication on the Confor website.

26.5 The Purchaser must report any suspect pests or diseases to Forestry and Land Scotland and Scottish Forestry immediately upon becoming aware of the same

## 27 **WATER MANAGEMENT**

27.1 The Purchaser, in its capacity as forest works manager for the haulage of timber shall:

- (a) Ensure that operational planning and implementation at or in connection with the Sale Area will be undertaken to avoid fuel/oil pollution to enter water courses. No unauthorised or unlawful discharges are made as a result of the operations into any drains, sewers, controlled waters, or other waters either in contravention of Environmental Law or which may cause damage to people, or any other living organism, or the Environment.
- (b) Complete a pollution contingency plan and pollution control supplies must be present in vehicles at all times. The Purchaser shall procure that all relevant persons follow these appropriately.
- (c) Report any pollution incident to Forestry and Land Scotland

## 28 **MANGING THE ENVIRONMENT**

28.1 The FWM for Haulage will comply with any relevant obligations as laid out in the Confor Guidance on Responsibilities for Environmental Protection in Forestry 2018 and environmental laws

28.2 Forestry and Land Scotland will specify in schedule part 4 any environmental constraints that may be affected by timber haulage in or around the sale area and authorised access routes. The FWM for haulage will be responsible for Implementing and communicating control measures that must be put in place and communicated to any of the purchasers representatives, including:

- (a) Working hours and management of any restrictions of lorry movements.
- (b) Exclusion zones where Protected Species may be present
- (c) Other exclusion zones on site and/or any signage.

**29 COSTS AND EXPENSES**

29.1 Save as otherwise stated in this Agreement, each party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement.

29.2 The Purchaser will indemnify Forestry and Land Scotland on demand in respect of all costs and expenses incurred and any value added tax thereon by Forestry and Land Scotland in connection with the granting of any waiver or consent sought by the Purchaser or in connection with any variation, amendment, extension or modification of the Agreement requested by the Purchaser and in the enforcing, perfecting, protecting or preserving or seeking to enforce, perfect, protect or preserve any of Forestry and Land Scotland’s rights, or in suing for the recovery of any sum due from the Purchaser under this Agreement.

**30 GOVERNING LAW AND JURISDICTION**

This Agreement shall be construed according to and governed by the law of Scotland and each of the parties hereby irrevocably submits to the jurisdiction of the Scottish courts.

IN WITNESS WHEREOF these presents on this and the preceding 42 pages are together with the Schedule in 4 parts annexed hereto executed as follows:-

SUBSCRIBED for and on behalf of  
Forestry and Land Scotland at < >  
on the ..... day of ....., .....  
by:-  
Authorised Signatory.....  
Full Name .....

SUBSCRIBED for and on behalf of  
at >  
on the ..... day of ....., .....  
by:-