

Operational Agreement - for Haulage of Timber**AGREEMENT**

between

THE FORESTRY COMMISSION, acting in exercise of the powers contained in the Forestry Act 1967 and having its principal place of business at 231 Corstorphine Road, Edinburgh EH12 7AT (the “**Commission**”)

and

(Name)

(Address)

(the “**Contractor**”)

The Commission and the Contractor hereby agree as follows:

1 **Definitions**

In this Agreement:

- 1.1 the following expressions shall have the meanings set out opposite them, unless the context requires otherwise:-

Agreement	this Agreement, as from time to time varied, added to or extended;
Authorised Access Routes	the roads which may be used by the Contractor pursuant to this Agreement marked as such on the Contract Map, and/or such other roads as may be agreed between the Commission and the Contractor from time to time;
Business Day	any day on which clearing banks are open for general banking business in that part of the United Kingdom where the Services are being performed;
Commencement Date	the date specified as such in paragraph 1 of the Schedule (or such other date as may be agreed between the Contractor and the Commission);
Completion Date	the date specified as such in paragraph 6 of the Schedule (or such other date as may be agreed between the Contractor and the Commission);
Contract Map	the map or maps annexed as Part 2 of the Schedule;
Dangerous Substances	any radioactive or other emissions and any natural or artificial substances (whether in solid or liquid form or in the form of a gas or vapour and whether alone or in combination with any other substance) capable (in each case) of causing harm to man or any other living organism or damaging the environment or public health or welfare including (without limitation) any controlled, special, hazardous, toxic, radioactive or

dangerous waste whether or not such emission, substance or waste is referred to specifically in or regulated under any Environmental Law;

Data Protection Act

Data Protection Act 1998. This applies to both manual and computerised personal data and requires those who hold the data to register. The Commission is registered and complies with data protection principles of good practice.

Employment Law

includes all European Community, national or local laws or regulations, each as in existence or formally proposed at the date hereof and any law, regulation, statutory instrument or legislative provision which amends, extends, consolidates or replaces the same from time to time (or shall have done so) and any other regulation, statutory instrument or other subordinate legislation made thereunder or pursuant thereto, and any codes of practice, circulars, guidance notes and the like issued under or pursuant to any such law or regulation by any statutory body in the United Kingdom, which law, regulation, statutory instrument, legislative provision, subordinate legislation, code of practice, circular or guidance note concerns employment or welfare or the conditions of the workplace, and judicial and administrative interpretation of each of the foregoing;

Environmental Law

includes all European Community, national or local laws or regulations, each as in existence or formally proposed at the date hereof and any law, regulation, statutory instrument or legislative provision which amends, extends, consolidates or replaces the same from time to time (or shall have done so) and any other regulation, statutory instrument or other subordinate legislation made thereunder or pursuant thereto, and any codes of practice, circulars, guidance notes and the like issued under or pursuant to any such law or regulation by any statutory body in the United Kingdom, which law, regulation, statutory instrument, legislative provision, subordinate legislation, code of practice, circular or guidance note concerns the protection of man or any other living organisms or welfare or the environment or the conditions of the workplace or the generation, transportation, storage, treatment or disposal of Dangerous Substances, and judicial and administrative interpretation of each of the foregoing;

Force Majeure

in relation to either party, any circumstances beyond the reasonable control of that party (including without limitation any fire (other than fire damage caused as provided in Clause 7), explosion, flood, windthrow, Act of God, strike, lock-out or other industrial action);

Health and Safety Law

includes all European Community, national or local laws, regulations, statutory instruments, orders or legislative provisions in force from time to time (together hereafter referred to as "laws"), and any codes of practice, circulars, guidance notes and the like issued or approved by the Health and Safety Commission or the Health and Safety Executive or issued or approved under or pursuant to any laws by

any other statutory body in the United Kingdom, which law, regulation, statutory instrument, order, legislative provision, code of practice, circular or guidance note relates to health and safety or the conduct of forestry operations or of such other operations or processes as may be included in the Services, including but not limited to all duties, obligations and requirements imposed by or pursuant to the Factories Act 1961, Health and Safety at Work etc Act 1974, Occupiers' Liability (Scotland) Act 1960, Occupiers' Liability Acts 1957 and 1984, Control of Pollution Act 1974, Environmental Protection Act 1990, Construction (Design and Management) Regulations 1994 and any regulations, rules and orders made pursuant thereto and judicial and administrative interpretation of each of the foregoing;

Schedule	the Schedule annexed to, and which forms part of, this Agreement (as from time to time varied, added to or extended);
Services	the Services to be provided and performed by the Contractor which are described in Clause 2 and in paragraph 2 of part I of the Schedule;
Stacking Sites	those locations adjacent to Authorised Access Routes (at all times located within the Work Site) at which the Timber is from time to time made available for collection;
Timber	such timber as is from time to time made available by the Commission at the Stacking Sites for collection and haulage in accordance with this Agreement;
Work Site	those areas of land (including any Authorised Access Routes) shown by hatching (or otherwise identified) on the Contract Map.

- 1.2 references to a statute or statutory provision shall be construed as a reference to that statute or provision as respectively amended, consolidated, modified, extended, re-enacted or replaced from time to time and shall include the corresponding provisions of any earlier legislation and any orders, regulations, instruments or other subordinate legislation made from time to time under the relevant statute;
- 1.3 unless the context otherwise requires, any reference to a Clause followed by a number shall be a reference to the clause bearing that number in this Agreement;
- 1.4 expressions in the singular shall include the plural and vice versa and in one gender shall include all other genders and reference to a person shall include a reference to a firm, body corporate, or an unincorporated association and vice versa;
- 1.5 references to any legal term for any action, remedy, proceeding, legal document, legal status, court, official or any other legal concept or thing in any jurisdiction shall be deemed to include the legal terms most nearly approximating or analogous thereto in other relevant jurisdictions.

2 **Services**

- 2.1 The Services shall consist of the collection of Timber from the locations specified in paragraph 2 of Part I of the Schedule and its haulage to the destinations specified in that paragraph, during the period beginning on the Commencement Date and

ending on the Completion Date. The Contractor shall provide the Services to (and perform the Services for) the Commission in accordance with and subject to the terms of this Agreement (including but not limited to the provisions set out in paragraphs 2 and 3 of Part I of the Schedule) and in accordance with industry best practice.

2.2 The Contractor and the Commission shall hold a Pre-Commencement Meeting and the conclusions of the meeting will be recorded.

2.3

2.3.1 The Commission will notify the Contractor on each occasion when a consignment of Timber will be available for collection. The Contractor will deliver each consignment to the specified destination within such number of Business Days after notification as is specified in paragraph 2 of Part I of the Schedule.

2.3.2 The Contractor shall give the Commission reasonable notice of the date and time when the Contractor will remove any timber.

2.3.3 The Contractor shall only be entitled to remove any Timber in accordance with Forestry Commission approved dispatch procedure in respect of each individual load.

2.4 Time of delivery is of the essence of this Agreement. If the Contractor fails to make delivery of a consignment of Timber within the time required in terms of Clause 2.3.1, or notifies the Commission that it will fail to do so, then the Commission shall be entitled to make alternative arrangements for haulage of that consignment, the costs of which (to the extent that they exceed those that would have been payable in terms of this Agreement) shall be reimbursed to the Commission by the Contractor. The Contractor shall be liable in addition for any loss, including consequential loss, to which the Commission may be exposed as a consequence of any consignment of Timber not being delivered within the period specified.

The provisions of this sub-clause are without prejudice to the Commission's other rights under this Agreement (including but not limited to those set out in Clause 14).

2.5 If for some reason not foreseen at the time the Agreement was made the Commission is required to suspend uplift for part or all of the time between the Commencement Date and the Completion Date, the Commission shall, save in an emergency, write to the Contractor 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 Addenda to this Agreement. Where this clause applies, the Commission shall be deemed not to be in breach of the Agreement.

3 **Price and Payment**

3.1 In consideration of the performance of the Services, the Commission shall pay to the Contractor haulage charges calculated in accordance with the provisions set out in paragraph 4 of Part I of the Schedule. Where charges are calculated according to the weight of Timber transported, such weight shall be the net weight of Timber over a weighbridge approved by the Commission. Weight tickets must be returned to the Commission together with a copy of the approved conveyance note not more than ten Business Days after collection of the load to which each weight ticket relates. The Commission shall thereafter make payment to the Contractor at such rate as is specified in the Schedule.

3.2 Sums payable to the Contractor shall be paid (subject to the other terms of this Agreement) in accordance with the provisions set out in paragraph 5 of Part I of the Schedule.

4 **Access**

- 4.1 The Commission's policy is to allow public access on foot to all Commission forests wherever possible (subject to the Commission's Byelaws). However access is not allowed when this would infringe upon any agreements, covenants or undertakings and is controlled where it conflicts with the management and protection of the forest. The Contractor shall observe the Commission's policy on public access at all times and shall be responsible for informing all employees and sub-contractors of the same. In particular the Contractor shall observe any specific permissions and consents relating to other activities occurring on or near any location where the Services are being performed and shall obey the written or verbal instructions of any Commission officer.
- 4.2 Without prejudice to its other obligations under this Agreement, the Contractor shall ensure that:-
- 4.2.1 all vehicles using the Authorised Access Routes are, when loaded, within the weight limits defined by the road classification or as otherwise specified on the Contract Map;
- 4.2.2 all vehicles operated by or on behalf of the Contractor shall be in a roadworthy condition and suitable for the relevant road conditions and terrain and shall be driven or used only by competent personnel with all proper skill, care and attention and shall be driven at such speed as shall be prudent and reasonable in all the circumstances, having regard (without limitation) to the nature of the route, vehicular load and prevailing weather and road conditions;
- 4.2.3 all vehicles and/or equipment operated by or on behalf of the Contractor shall be in a safe and operable condition and, without prejudice to the foregoing, shall comply with and be operated in accordance with all applicable legal requirements;
- 4.2.4 the use of any machine or method of working operated by or on behalf of the Contractor which is causing or is likely to cause, in the opinion of the Commission, avoidable damage to standing trees, any road, path, track or drain, or to other property, is stopped on request from the Commission; and
- 4.2.5 the Authorised Access Routes and all roads in and around any work site (including, for the avoidance of doubt all public rights of way and access) are at all times kept free of obstructions resulting from the Contractor's operations which would prevent free flow of traffic except for a minimum of delay, except where agreement has been reached for temporary closure in connection with the performance of the Services or unless otherwise specifically agreed by the Commission.
- 4.3 The Contractor must use Authorised Access Routes only (and may use such routes solely for the fulfilment of its obligations under the Agreement). The Contractor must take every reasonable precaution to prevent any avoidable damage to such Authorised Access Routes (including, without prejudice to the generality of the foregoing, ensuring that they are not used after exceptionally heavy rains or during or after a thaw, until suitable for use without causing avoidable damage) and restore all actual damage occasioned thereto. The use of such routes shall be at the Contractor's own risk and (save to the extent occasioned by the negligence of the Commission or its employees) the Commission shall not be liable for any damage or injury arising out of the Contractor's use of such routes. The Commission gives no warranty that any such authorised access routes will be usable by vehicles at any specified time.

In the event that all or part of the Authorised Access Routes require to be repaired or maintained, the Commission shall be entitled, after consultation with the Contractor save in an emergency, to close all or part of the Authorised Access Routes while the

work is carried out.

Where through no fault of the Contractor, its employees, agents, contractors, sub-contractors and the employees of any of them, any of the Authorised Access Routes requires repair, the Commission shall where practicable within ten Business Days of that fact being made known to the Commission endeavour to repair such damaged part or parts of that Authorised Access Route to the standard of the road classification as stated in the Schedule.

5 **Health and Safety at Work**

The Contractor shall ensure full compliance on the part of itself, its employees, its sub-contractors and agents and their respective employees, with all Health and Safety Law in relation to any action by or on behalf of the Contractor in connection with the provision and performance of the Services taking place upon the land, access routes or other premises/property of the Commission. Furthermore the Contractor accepts that the minimum safety standards relevant to forestry operations are those defined and promulgated by FASTCo. (the Forest and Arboricultural Safety and Training Council) and such other safety standards as may be stipulated from time to time by the Commission. In the event of any breaches of the statutory requirements or standards being committed by the Contractor or its sub-contractors or agents, or any of its or their employees, the Commission may inform the Contractor of the nature of the breach and of the remedial action which the Commission requires to be taken and may specify the time within which such remedial action is to be taken. Failure to comply with such requirement within the time specified will be regarded as a breach of the Agreement.

6 **Environment**

The Contractor shall at all times comply with all Environmental Law and any other regulation affecting the conduct of the Contractor'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 its employees, sub-contractors and agents or the employees of any of them in relation to the Agreement. Without limiting the generality of the foregoing, the Contractor shall ensure that:

- 6.1 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 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
- 6.2 no watercourses are impeded as a result of the Contractor's operations and no unauthorised or unlawful discharges are made, as a result of the Contractor's operations, to any drains, sewers, controlled waters or other waters either in contravention of Environmental Law or which may cause damage to man, any living organism or the environment.

7 **Fires**

The Contractor shall not light fires within the forest area without permission of the Commission and shall take all reasonable and proper precautions under the direction of the Commission to prevent and to deal with fire in the said area or adjoining ground and the Contractor shall be responsible for any loss whatsoever through fire attributable to his negligence.

8 **Noise**

The Commission reserves the right to prohibit or restrict the use of power saws and any other machines on its property where their use would, in the Commission's reasonable opinion, constitute a nuisance to the general public or to local residents. Such prohibition

shall not be regarded as justifying further changes in the terms, conditions or prices in the Agreement.

9 **Caravans etc.**

No caravan, mobile home, campervan or equivalent vehicle or tent shall be brought onto the Commission's land without the written consent of the Commission.

10 **Liability/Indemnity**

10.1 The Contractor will indemnify the Commission against any loss, cost, liability, injury, damage or expense occasioned by the act or default or omission of the Contractor or its sub-contractors or agents, or the employees of any of them, in the performance of the Agreement or arising out of any breach of the Agreement by the Contractor or out of any claim by a third party based on any facts which, if substantiated, would constitute such a breach.

10.2 The Contractor shall cause no damage or injury to the property of the Commission or third parties, or injury to the Commission's employees or third parties. Without prejudice to any other rights of the Commission the Contractor shall be liable for any wilful, reckless or negligent damage due to any act or default of the Contractor or its sub-contractors or agents, or the employees of any of them, arising in any way in connection with the performance of the Agreement and shall make good the same to the satisfaction of the Commission within 14 Business Days of its occurrence. If work to rectify any damage requires to be carried out as a matter of urgency, then the Commission may undertake such work or instruct third parties to do so. In that event, the costs incurred by the Commission in undertaking such work or having it undertaken shall be reimbursed immediately by the Contractor upon written demand by the Commission.

11 **Force Majeure**

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

On the giving of such notice by either party then the Completion Date shall be extended for a period equivalent in working hours and conditions to the period of the delay or suspension thereby caused.

12 **Rewards**

The Contractor shall not offer any reward, perquisite or emolument whatsoever to any person in the employment of the Commission.

13 **Assignment**

The Contractor shall not assign or sub-let its rights under this Agreement except with the written consent of the Commission and upon such terms as the Commission may require.

14 **Termination for Breach and Suspension**

14.1 The Commission shall be entitled by written notice to terminate this Agreement with immediate effect (but without prejudice to the Commission's other rights or remedies hereunder) if the Contractor commits a material breach of the terms of this Agreement which is irremediable.

- 14.2 The Commission shall be entitled to terminate this Agreement on giving [one month's] written notice to the Contractor in the event that a remediable breach of any term of this Agreement (not being a breach caused by Force Majeure pursuant to Clause 11 above or a breach referred to in Clause 14.4 below) is committed by the Contractor and not remedied within such reasonable period as shall be specified by the Commission by written notice served on the Contractor, or if (in the Commission's reasonable opinion) there is a persistent repetition of remediable breach by the Contractor. A remediable breach is one where the Contractor can comply with the provision in question in all respects other than as to the time of performance.
- 14.3 Without prejudice to the provisions of Clause 2.4, the Commission may terminate this Agreement by giving [one month's] written notice to the Contractor:-
- 14.3.1 if the Contractor fails to make delivery of a consignment of Timber within the time required in terms of Clause 2.3.1 (other than by reason of Force majeure) and fails to remedy such failure within such reasonable period as may be specified by the Commission by written notice served on the Contractor, or
- 14.3.2 if the Contractor repeatedly fails (other than by reason of Force majeure) to make deliveries of consignments within the times required in terms of Clause 2.3.1.
- 14.3.3 if the Contractor or its sub-contractors or agents, or the employees of any of them, does or fails to do anything which brings or might reasonably be expected to bring into disrepute the Commission, its officers, employees, clients or suppliers (including, but not limited to committing an act of fraud or dishonesty or violence whether or not connected with the provision of the Services).
- 14.4 The Commission shall be entitled to terminate this Agreement with immediate effect (but without prejudice to the Commission's rights and claims hereunder) by written notice to the Contractor if:-
- 14.4.1 the holder of any security takes possession of or a receiver (or, in England or Wales, a receiver or manager) is appointed over any of the property or assets of the Contractor or if any diligence, distress or execution shall be levied or enforced or sued out upon or against any of the property or assets of the Contractor;
- 14.4.2 the Contractor makes any voluntary arrangement with its creditors or becomes subject to an administration order;
- 14.4.3 the Contractor (being a corporation) 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 assumes the obligations imposed on the Contractor hereunder);
- 14.4.4 the Contractor (being an individual or partnership), becomes apparently insolvent or is sequestrated or if (in England or Wales) any petition or receiving order is made against him or if the Contractor shall be unable to pay his debts or suspends payment of his debts; or
- 14.4.5 the Contractor ceases to carry on business.
- 14.4.6 the Contractor or its sub-contractors or agents, or the employees of any of them, does or fails to do anything which brings or might reasonably be expected to bring into disrepute the Commission, its officers, employees, clients or suppliers (including, but not limited to committing an act of fraud or dishonesty or violence whether or not connected with the provision of

the Services).

- 14.5 For the avoidance of doubt, a breach of Clauses 4.2, 5, 6, 7 and 17 hereof will be deemed to be material for the purposes of this Clause 14.
- 14.6 Any termination of this Agreement for any reason shall be without prejudice to any other rights or remedies a party may be entitled to at law or under this Agreement and shall not affect any accrued rights or liabilities of either party nor the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination, including but not limited to Clauses [1, 10, 15, 17, 20, 23, 24 and 28].
- 14.7 Without prejudice to the preceding provisions of this clause and without prejudice to the Commission's other rights or remedies under this Agreement, in the event that the Commission becomes aware of any breach of Health and Safety Law by the Contractor or any of its employees, or by any of the Contractor's sub-contractors or agents or any of their respective employees, the Commission may by notice in writing to the Contractor suspend the further performance of this Agreement until such time as it has investigated such breach. Following such investigation, and without prejudice to the Commission's other rights and remedies under this Agreement, the Commission may (if applicable) exercise its rights to terminate this Agreement pursuant to this Clause 14 or may, by a further notice in writing, require the Contractor to perform the Agreement insofar as then remaining unperformed.

15 **Removal from Site**

The Contractor shall within one month of the termination of this Agreement or within one month of completion of the Services, whichever is the earlier, remove from the forest area any equipment or erections belonging to the Contractor. Should the Contractor fail to remove such equipment or erections within the time specified, it shall be regarded as having abandoned the equipment or erections (but so that the Contractor shall remain liable for all injury or damage caused by such equipment or erections) and the Commission shall be entitled to retain or remove them as it thinks fit. The Contractor shall on demand reimburse the Commission for all costs incurred in removing or disposing of any equipment or erections so abandoned and making good any damage resulting therefrom.

16 **Compliance with Regulations**

The Contractor shall ensure that, in the course of and in connection with the performance of this Agreement, it and its sub-contractors and agents, and their respective employees, comply with all applicable requirements of European Community, national and local laws, regulations, statutory instruments, orders or legislative provisions in force from time to time and, without prejudice to the foregoing generality:

- 16.1 the Contractor shall ensure that it and its employees, sub-contractors and agents are fully acquainted with, and comply in all respects with the terms of, the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 ("RIDDOR"); the Contractor shall ensure that the Commission is notified immediately of any death, injury, disease or dangerous occurrence in respect of which notification requires to be given by a responsible person under RIDDOR, and that the Commission receives all relevant details that require to be included in a report by a responsible person under RIDDOR forthwith (in the case of a reportable disease) or within 5 working days, in the case of a death, injury or dangerous occurrence;
- 16.2 the Contractor shall ensure that it and its employees, sub-contractors and agents are fully acquainted with, and comply in all respects with the terms of, the Forestry Commission Byelaws 1982 and any amendment or addition thereto which may from time to time be notified to the Contractor by the Commission (the "Byelaws").

Copies of booklets containing the regulations laid down by RIDDOR and the Byelaws are held by the local Forest District Manager. The Contractor shall observe such reasonable verbal or written instructions as may be issued by Commission Officers in relation to compliance with RIDDOR and/or the Byelaws.

17 **Insurance**

- 17.1 Throughout the term of the Agreement, the Contractor shall, at its own expense, maintain insurance with an insurance company approved by the Commission, in an amount of not less than £5,000,000, unless otherwise stated in the schedule, per claim, against all loss, damage and insurable risks of third party liability arising out of the acts or omissions, works, operations or processes pursuant to this Agreement of the Contractor, its sub-contractors and agents and the employees of any of them as the Commission shall, in its sole discretion, determine (acting reasonably) and the Contractor shall pay or have paid all premiums and other monies necessary for said insurance.
- 17.2 Prior to the Commencement Date or (at the discretion of the Commission) within a reasonable period after such date, and thereafter when so requested by the Commission at any time, the Contractor shall produce to the Commission the policy or policies of such insurance and the receipt(s) for the then current year's premium.
- 17.3 The Company shall not commit (and shall procure that none of its employees, sub-contractors or agents or any of their respective employees shall commit) or permit any act or omission in connection with the provision and performance of the Services or otherwise under or pursuant to this Agreement which may render the policy or policies of insurance effected in accordance with this Clause 17 void or voidable.

18 **Settlement of Disputes/Arbitration**

If any dispute or difference of any kind shall arise out of any of the provisions of this Agreement upon which agreement cannot be reached between the Commission and the Contractor the dispute or difference shall be referred to an independent arbiter/arbitrator agreed upon between the parties for a decision, which decision shall be final and binding upon the parties.

19 **Waiver**

The failure by the Commission to enforce at any time or for any period any one or more of the terms and conditions of this Agreement shall not be a waiver of its right at any time subsequently to enforce all terms and conditions of this Agreement.

20 **Independent Contractor**

The Contractor is engaged to provide the Services as an independent contractor and neither it, nor any of its employees, sub-contractors or agents (or their respective employees), is the employee of the Commission. The Contractor shall bear exclusive responsibility for the payment of (and shall indemnify the Commission against) all income tax, national insurance contributions and other taxes or duties payable on or in respect of any sum paid to the Contractor under this Agreement (other than to the extent that the Commission is under any obligation to pay value added tax to the Contractor on any such sum). The Contractor shall further be responsible for accounting for and making payment of any income tax, national insurance contributions and other taxes or duties payable on or in respect of any sum paid by it to any of its employees, sub-contractors or agents and shall indemnify the Commission against any liability imposed on the Commission in respect of any such income tax, national insurance contributions or other taxes or duties.

21 **Sub-Contractors**

The Contractor shall not perform any or all of its obligations under this Agreement through sub-contractors or agents (other than through the Contractor's own employees) without

notifying the Commission and obtaining its prior written consent [(such consent not to be unreasonably withheld or delayed)]. The Contractor shall remain liable for the performance of all its obligations under this Agreement notwithstanding its appointment of any such authorised sub-contractor or agent to perform any of them. Any act or omission of any sub-contractor or agent of the Contractor, or of any employee of the Contractor or of any such sub-contractor or employee, shall be deemed to be the act or omission of the Contractor which shall be responsible therefor accordingly and shall indemnify the Commission against any loss or damage suffered by the Commission arising from any act or omission of such sub-contractors, agents or employees.

22 **Notices**

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

- 22.1 in the case of the Commission at or to the address and, where appropriate, to the fax number and marked for the attention of the person, all as specified in paragraph 7 of the Schedule hereto;
- 22.2 in the case of the Contractor at or to its address specified in the preamble to this Agreement, or at or to such other address as shall have been last notified to the other party for that purpose;
- 22.3 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 the same was posted 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 posted;
- 22.4 any notice or document given or served by fax will be deemed to have been 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. Any notice served on behalf of the Forestry Commission by email will be deemed to have been sent provided no failed delivery notice is received.

23 **Confidentiality**

Throughout the period of this Agreement and after the termination thereof, the Contractor shall treat as confidential all information of a confidential nature which may be in or come into its possession relating to the Commission or the activities, affairs, businesses or customers of the Commission or the terms of this Agreement. The Contractor shall not make use of such information for any purpose other than the performance of its obligations under this Agreement nor (except where required by law) disclose such information to any third party other than to its employees or its authorised sub-contractors or agents, and then only to the extent that it is necessary to do so for the proper performance of the Contractor's obligations under this Agreement. The Contractor shall ensure that any employee or authorised sub-contractor or agent to whom such confidential information is so disclosed shall maintain its confidentiality and not make use of it for any purpose other than the performance of the Contractor's obligations under this Agreement. The provisions of this clause shall cease to apply to any such confidential information as is referred to above which becomes public knowledge other than by reason of a breach of this clause and through no fault of the Contractor.

24 **Intellectual Property**

- 24.1 Immediately following the conception, origination or making of any discovery, invention, secret process or improvement in procedure by the Contractor (or its employees, agents or sub-contractors) in the course of or otherwise in connection with

the performance of the Services (any such discovery, invention, secret process or improvement being hereafter referred to as an 'Invention'), the Contractor shall disclose full details of the Invention to the Commission. The Commission shall, in its sole discretion, be entitled to apply for patent rights or other equivalent protection in the United Kingdom or any other part of the world for any such Invention. The Contractor agrees to assign to the Commission all right, title and interest in and to any such Invention together with any other intellectual property rights arising out of the provision of Services and further agrees to assist the Commission in connection with any application for patent rights or other equivalent protection and do all such acts and things as the Commission may consider necessary or desirable in connection with any such assignation or assistance.

- 24.2 The Contractor assigns to the Commission by way of future assignation of copyright the copyright in all documents and other works in which copyright is capable of subsisting in accordance with the Copyright Designs and Patents Act 1988, which document or work is originated or made by the Contractor in the course of or otherwise in connection with the performance of the Services, for all classes of act which by virtue of the said Act the owner of the copyright has the exclusive right to do throughout the world and for the whole period for which such copyright shall subsist.
- 24.3 The Contractor hereby irrevocably appoints the Commission to be its attorney or agent in its name and on its behalf to do all such acts and things and to sign all such deeds and documents as may be necessary in order to give the Commission the full benefit of the provisions of this clause. A certificate signed by any authorised signatory on behalf of the Commission to the effect that any act or thing or deed or document falls within the authority hereby conferred shall be conclusive evidence in favour of any third party that this is the case

25 **Data Protection Act**

The Commission will only use personal data relating to the Contractor in accordance with data protection legislation. Such personal data will be collected, processed and used by the Commission or its duly authorised agents only for the purposes of complying with or enforcing (as appropriate) the rights and obligations granted or imposed upon the parties in terms of this Agreement, ensuring good forest management and in the interests of health and safety. From time to time the forest areas subject to this agreement may be used by third parties. It may be necessary in the interests of safety and good forest management, for such third parties to notify the Contractor of any events or circumstances that may affect its use of the forest. In such circumstances, and for this purpose only, the Commission may disclose personal data regarding the Contractor to such third parties and by the Contractor's execution hereof the Contractor hereby consents to the use and disclosure of such data in accordance with the provisions of this clause. The Commission will take reasonable steps to ensure that the third parties any personal data is disclosed to in terms of this clause shall use and process such personal data only in accordance with data protection legislation. However the Commission shall have no liability to the Contractor for any failure on the part of such third party to do so.

26 **Severance**

If a court or an appropriate authority decide that any part of the Agreement is invalid or unenforceable the remaining parts will still apply.

27 **Entire Agreement and Amendment**

This Agreement contains the whole agreement between the parties in respect of the subject matter hereof and supersedes and replaces all prior proposals, agreements, representations and negotiations relating thereto, whether written or oral or implied between the parties or their respective advisers, save as otherwise provided herein and no modification or alteration of this Agreement shall be validly made unless in writing and signed by or on behalf of both parties hereto.

28 **Warranties**

Each of the parties warrants that it has power and authority to enter into this Agreement.

Both parties warrant and undertake that they are not aware, as at the date of this Agreement, of anything within their reasonable control which might or would adversely affect their ability to fulfil their obligations under this Agreement.

29. **Governing Law and Jurisdiction**

This Agreement will be interpreted according to and governed by the law of Scotland and each of the parties will irrevocably submit to the judgement of the Scottish courts.

This Agreement, which consists of this, the preceding pages and the attached Schedule, is completed in duplicate as follows:

SIGNED for and on behalf of the FORESTRY COMMISSION

on the day of,

by:-

Authorised Signatory.....

Full Name

SIGNED for and on behalf of THE CONTRACTOR

on the day of,

by:-

Authorised Signatory.....

Full Name