

TIMBER SALES CONTRACT

Chapter 28, Wis. Stats.
Form 2400-005G (R 9-22)

Name of Property: Chequamegon-Nicolet National Forest

Contract No. _____

THIS CONTRACT IS ENTERED INTO by and between the State of Wisconsin (Seller), as a cooperator for the United States Forest Service (Forest Service) for the administration of this Contract, and _____ (Purchaser) for the purpose of selling timber of the Seller. The Seller sells and the Purchaser agrees to purchase, cut and remove **ONLY** those trees (timber) specifically described in this Contract or marked by the Seller for cutting on the "sale area" which is identified or described in maps or diagrams attached to and made part of this Contract.

THE PROVISIONS OF THIS CONTRACT and all authority for use of the Seller's or Forest Service property for the cutting of timber (which includes felling, bucking, skidding, loading or hauling) are mutually agreed upon by the Seller and Purchaser and subject to the following terms and conditions:

1. PERFORMANCE.

- a. Commencement. Cutting and removal of timber in conformance with this Contract may commence and continue only after the signing of this Contract by both parties and only after submission and maintenance of all bonds, certificates or statements required under it.
- b. Contract Oversight. Cutting and removal of timber purchased under this Contract shall be conducted in conformance with this Contract and in a good and workmanlike manner with reasonable diligence to assure completion of all performance within the Contract period specified in par. 2.

2. CONTRACT PERIOD.

- a. All work under this Contract shall be completed to the satisfaction of the Seller between the signing of the Contract by both Parties and _____ (END DATE), FOR TIME IS OF THE ESSENCE. Contract amendments or extensions may not be relied upon by the Purchaser for the purpose of completing performance under this Contract.
- b. The Seller may temporarily suspend operations, including hauling, under this Contract due to excessive property damage, wet conditions, identification of resources needing special protection, a court order or other legal sanction, identification of additional requirements to comply with NEPA, or for any other reason upon notice to the Purchaser or other persons operating on the sale area under this Contract with subsequent equitable adjustment of this Contract deemed reasonable by the Seller. The Seller may temporarily suspend operations, including hauling, under this Contract following a contract breach by the Purchaser for failure to make payments as scheduled on any other similar timber sale contract entered into by the Purchaser with the State of Wisconsin or the Forest Service, until such time as the outstanding overdue amounts and interest due are paid in full.

3. CONTRACT EXTENSIONS. If extensions of this Contract are deemed reasonable by the Seller, the stumpage price agreed upon herein shall be adjusted as follows:

- a. First extension: _____
- b. Second extension: _____
- c. Additional extensions: _____
- d. Other applicable charges or fees: _____

4. TERMINATION. The Seller may terminate this Contract by oral or written notice to the Purchaser upon its breach as determined by the Seller, identification of resources needing special protection, a court order or other legal sanction, identification of additional requirements to comply with NEPA, or at other times when deemed necessary by the Seller. The Seller may also terminate this Contract upon breach of any other similar timber

sale contract entered into by the Purchaser with the State of Wisconsin, Forest Service, or with a County Forest in the State, as determined by the Seller. Upon such notice, the Purchaser shall cease all operations on and immediately leave, and not return to, Forest Service land unless otherwise provided by the Seller.

5. PERFORMANCE; PERFORMANCE BOND; LIQUIDATED OR ACTUAL DAMAGES; FUTURE CONTRACTS.

- a. A performance bond in the Seller's favor in the amount of \$ _____, in cash, by surety bond, or in any other form accepted by the Seller, shall be submitted by the Purchaser no later than _____ to be retained by the Seller to assure full and complete performance of the Contract by the Purchaser to the Seller's satisfaction. Failure to submit the bond will be considered a breach of this Contract and subject the Purchaser to liability for damages. The Purchaser agrees that the bond shall be forfeited to the Seller as liquidated damages upon the Seller's determination a condition or term of this Contract has been breached by the Purchaser, unless the Seller chooses and can reasonably determine the actual damages suffered as a result of the breach of the Contract. Damages assessed under this Contract are the responsibility of the Purchaser and may be deducted from this performance bond and otherwise collected by the Seller.
- b. The Purchaser agrees that the performance bond may be retained by the Seller until all performance under this Contract has been completed to the Seller's satisfaction and the Seller determines the performance has been so completed. If the Seller determines the performance has not been completed satisfactorily and in conformance with this Contract, the performance bond may be retained by the Seller until the Seller can determine damages caused by the lack of performance. If damages exceed the amount of the performance bond, the Seller may retain any prepaid stumpage up to the amount of calculated damages, at the Seller's discretion. If damages exceed the amount of the performance bond, the Seller may bill and seek damages from the Purchaser, in equity or in law, for the amount of calculated damages in excess of the performance bond, at the Seller's discretion. Only in the event the Purchaser provides written notice of sale completion to the Seller shall the Seller have sixty (60) days to determine that performance has been completed as required under this Contract.
- c. If timber or other forest products not specifically described in this Contract or designated by the Seller for cutting are cut, excessively damaged or removed by the Purchaser, the Seller may pursue any and all remedies for the unlawful use of Forest Service land and the cutting, damage or removal of property without consent, including the seeking of criminal or civil charges for theft, timber theft or criminal damage to property in addition to its Contract remedies for breach.
- d. The Seller may, when it deems it reasonable and in the best interest of the Seller, allow the Purchaser to continue performance under the Contract and the Purchaser shall pay as liquidated damages double the mill value as determined by the Seller for the timber or other forest products cut, removed or excessively damaged without authorization under or in violation of this Contract. The Seller's permission to continue cutting shall not be considered a waiver of breach nor prevent it from considering such breach for purposes of asserting any other remedies available to it. It is agreed that the double mill scale sum is a reasonable estimate of the probable damages suffered by the Seller and shall not be construed as or held to be in the nature of a penalty.
- e. The Purchaser agrees that if the timber identified in this Contract for cutting is to be resold due to a breach of this Contract, as determined by the Seller, the Seller is not obligated to give oral or written notice to the Purchaser of the resale.
- f. The Seller's damages upon the Purchaser's failure to perform this Contract include, but are not limited to:
 - (1) The Purchaser's current stumpage rate of timber not cut and removed under this Contract.
 - (2) Double the mill value, as determined by the Seller, for timber cut, removed or excessively damaged without authorization under or in violation of this Contract.
 - (3) All costs of sale area cleanup, restoration or completion of performance not completed by the Purchaser.
 - (4) All costs of resale of timber not cut and removed as required under this Contract.

- (5) If the Seller seeks damages for breach of this Contract through court proceedings, and if the Seller prevails in such proceedings, in whole or in part, then the Purchaser agrees to pay all of the Seller's actual and reasonable expenses, including attorneys and expert witness fees.

The Seller agrees to mitigate the damages for breach by offering the timber for resale if it determines the timber is saleable based upon its volume or quality.

- g. A Purchaser deemed by the Seller to be in breach of this Contract may also be considered an irresponsible bidder and be refused the opportunity to bid upon or obtain future timber sales of the Seller on State of Wisconsin or National Forest lands for a period not to exceed two (2) years from the date of determination of the breach.
6. REMOVAL WITHOUT PAYMENT. Timber or other forest products may not be removed from the sale area until paid for as provided in this Contract or other guarantees for payment have been made with and to the satisfaction of the Seller so as to authorize its cutting and removal. Upon removal of timber or other forest products in violation of this paragraph, the Purchaser agrees to pay as liquidated damages double the mill value of the timber removed, and in addition to pursuing its remedies for breach of Contract, the Seller may seek charges against the Purchaser for Timber Theft, Theft, Criminal Damage to Property, or a violation of administrative rule or ordinance.

7. TITLE TO TIMBER. *(circle the appropriate section based on type of sale)*

- a. MEASURED SALES – All right, title, and interest in and to any timber shall remain in Forest Service with the State of Wisconsin acting on behalf of the Forest Service under this GNA Contract, until it has been measured, removed from the sale area or other authorized cutting area, and paid for as provided in this Contract, at which time title shall vest in Purchaser. Title to any timber that has been measured and paid for, but not removed from the sale area or other authorized cutting area by Purchaser on or prior to Contract end date or termination date, shall remain in Forest Service.
- b. SCALED SALES – All right, title, and interest in and to any timber shall remain in Forest Service with the State of Wisconsin acting on behalf of the Forest Service under this GNA Contract, until it has been cut, scaled and removed from the sale area or other authorized cutting area, and paid for as provided in this Contract, at which time title shall vest in Purchaser. Title to any timber that has been cut, scaled and paid for, but not removed from the sale area or other authorized cutting area by Purchaser on or prior to Contract end date or termination date, shall remain in Forest Service.

8. PAYMENT; PAYMENT SCHEDULE (Attached).

- a. The Purchaser agrees to pay payments for timber removed under this Contract in the amount and in accordance with the payment schedule and its conditions which is attached to and made a part of this Contract. Payment shall be in the form acceptable to the Seller.
- b. The volume of timber indicated in this Contract or other appraisal or cruise documents of the Seller are estimates. The Seller gives no warranty or guarantee respecting the quantity, quality or volume of marked or otherwise designated timber or forest products on the sale area.
- c. BANKRUPTCY. The Purchaser must immediately inform the Seller of any bankruptcy declaration or filing. Upon notification of bankruptcy filing, any Purchaser on a deferred stumpage payment schedule will be switched to an advanced stumpage payment schedule on all timber sale contracts entered into by the Purchaser with the State of Wisconsin, as detailed on the attached payment schedule.

9. CUTTING REQUIREMENTS.
("DBH" represents the diameter of the timber 4.5 feet above the ground):
10. UTILIZATION SPECIFICATIONS:
- a. CORDWOOD:
 - b. SAWLOGS:
 - c. OTHER:
11. WASTE. The Purchaser agrees to complete all operations and performance as described in this Contract without waste or nuisance on the sale area or any other property of the Seller and use all reasonable care not to damage trees not designated or marked for cutting. Young growth bent or held down by felled trees shall be promptly released.
12. STUMP HEIGHT; TOPS. The maximum stump height may not exceed the stump diameter; except for stumps of a diameter of less than 10 inches, the height of the stump may not exceed 10 inches. Title to tops shall remain with the Seller and may not be utilized by the Purchaser, or at the Purchaser's direction, unless otherwise specified in this Contract.
13. ZONE COMPLETION. The Purchaser agrees to complete all operations on each portion of the sale area or each zone as designated on the sale area map, or other attachments or in the cutting requirements before beginning cutting in the next portion or zone, unless agreed to otherwise by the Seller.
14. FOREST FIRE PREVENTION. The Purchaser agrees to take reasonable precautions to prevent the starting and spreading of fires. Those precautions include, but are not limited to:
- a. A minimum of one fully charged 5 pound or larger ABC fire extinguisher with a flexible spout shall be carried on each off-road logging vehicle.
 - b. All chainsaws and all non-turbocharged off-road logging equipment used in the operation shall be equipped with spark arrestors which have been approved by the U.S. Forest Service. Such arrestors may not be altered in any manner or removed and shall be properly maintained. (Information on approved arrestors may be obtained from the Seller.)
 - c. If a fire occurs, the Purchaser agrees to promptly cooperate in the control and suppression of the fire.
 - d. The Purchaser shall comply with requests regarding forest fire prevention and suppression made by the Seller and take all reasonable precautions to prevent, suppress and report forest fires. Those requests may include ceasing or modifying operations.
 - e. The Purchaser shall be responsible for damage and forest fire suppression costs, including that provided in ss. 26.14 and 26.21, Wis. Stats., caused by their operation under this Contract.
 - f. Other:
15. TRAINING REQUIREMENT. The Purchaser shall ensure that at least one in-woods person actively engaged in performance of this Contract and responsible for the logging site complies with the Wisconsin Sustainable Forestry Initiative® (SFI®) Training Standard as adopted by the Wisconsin SFI Implementation Committee (SIC). Criteria for the standard can be found at the website https://www.fistausa.org/fista/SFI_Workshops.asp or by contacting the Forest Industry Safety & Training Alliance (FISTA). Purchaser agrees to provide documentation to Seller that the training has been attained prior to initiating sale.
16. SLASH. Slash as defined in s. 26.12, Wis. Stats., shall be disposed of as follows:

- a. Slash falling in any lake or stream, in a right-of-way or on land of an adjoining landowner shall be immediately removed from the waters, right-of-way or adjoining land. Tops from felled trees may not be left hanging in standing trees. All trees shall be completely felled and not left leaning or hanging in other trees.
- b. Other:

17. CLEANUP AND USE OF SALE AREA.

- a. The Purchaser shall remove, to the satisfaction of the Seller, all equipment, tools, solid waste, oil filters, grease cartridges, trash and debris remaining on the sale area or Forest Service land upon completion of performance under this Contract, termination of this Contract due to breach by the Purchaser or when requested by the Seller.
- b. No residence, dwelling, permanent structure, or improvement may be established or constructed on the sale area or other land of the Forest Service.
- c. The Purchaser agrees to properly use and dispose of all petroleum products, including but not limited to oil, hydraulic fuel and diesel fuel. Any on-site spillage must be properly removed and cleaned up by the Purchaser to the satisfaction of the Seller.

18. ROADS, RECREATIONAL INFRASTRUCTURE, LANDINGS, MILL SITES, CAMPSITES, EROSION CONTROL, BEST MANAGEMENT PRACTICES (BMPs). (The tables in this section only need to be completed if applicable)

a. Road use, construction, reconstruction & maintenance:

- (1) Purchaser is authorized to construct and maintain roads, bridges, and other transportation facilities, as needed for harvesting. As used in this Contract “construct” includes “reconstruct.”
- (2) Specified Roads. “Specified Roads” are roads, including related transportation facilities and appurtenances, shown on Sale Area Map and listed below which the Purchaser must construct under this Contract. Construction initiated by Purchaser on any such Specified Road shall be completed to an agreed terminus that meets Purchaser’s needs and prevents unnecessary impact on National Forest resources. Construction to such terminus shall be in full accordance with plans and specifications in the table below or specifications attached hereto.

Description of Governing Road Specification: _____

Project		Design Class	Approx. Length (mi./km.)	Sheet Numbers and Approval Date	Performance Responsibility		
					Survey	Design	Const. Staking ^{1/}
Road No.	Name						

^{1/} Indicate timing, i.e., before clearing (BC) or after clearing (AC).

- (3) Location and construction of Specified Roads shall be agreed to in writing before construction is started. Unless otherwise provided herein, construction may be progressive during this Contract. The location and clearing widths of all Temporary Roads or facilities shall be agreed to in writing before construction is started. "Temporary Roads" are roads other than Specified Roads that are constructed by Purchaser for the purpose of harvesting Included Timber.
- (4) Use of Roads by Purchaser. Except as provided herein, Purchaser is authorized to use existing National Forest system roads and Specified Roads when Seller determines that such use will not cause damage to the roads or National Forest resources. If Purchaser's use of an existing Temporary Road, Specified Road, or National Forest system road cannot be satisfactorily accommodated without reconstruction, Purchaser may be authorized to use such road upon agreement as to the minimum reconstruction work that Purchaser shall perform before hauling.
- (5) Existing roads are shown on Sale Area Map. Existing roads that for such reasons as limitations in structural capacity, safety, and protection of soil, water, and road structure which either cannot be used for log hauling or may be used only under the restrictive limitations stated herein are listed below. Purchaser's use of existing roads identified on Sale Area Map by the following codes is prohibited or subject to restrictive limitations, unless agreed otherwise:

<u>Code</u>	<u>Use Limitations</u>
X	Hauling prohibited
R	Hauling restricted
U	Unsuitable for hauling prior to completion of agreed reconstruction
P	Use prohibited
A	Public use restriction
W	Regulation waiver
O	Road may be used without restriction, unless unreasonable damage is caused

Roads coded A will be signed by Seller or Forest Service to inform the public of use restrictions. Purchaser's use of roads coded R, A, or W shall be in accordance with the following restrictions:

Road List

Road Number	Road Name	Termini		Map Legend	Description of Restrictions
		From	To		

- (6) When not otherwise designated by the Seller, the location and use of all roads, recreational infrastructure, landings, mill sites and campsites on Forest Service land is subject to advance approval and under the conditions established by the Seller. All restoration, cleanup or repair of roads, recreational infrastructure, landings, mill sites and campsites, or the cost of the cleanup, if not completed by the Purchaser to the satisfaction of the Seller, is the responsibility of the Purchaser.

(7) Road Maintenance. Purchaser shall maintain roads, commensurate with Purchaser's use. Roads must be left in as good or better condition than existed prior to harvest. Performance of road maintenance work by Purchaser may be required prior to, during, or after each period of use. The timing of work accomplishment shall be based on Purchaser's operating schedule and road conditions. Specific required road maintenance specifications are included below.

i. Purchaser shall maintain roads in accordance with the following Contract Road Maintenance Requirements Summary:

Contract Road Maintenance Requirements Summary

Road	Termini		Miles	Timing: - Pre-haul - During - Post haul	Applicable Road Maintenance Specifications								
	From	To											

(8) When two or more commercial users are simultaneously using the same road, the commercial users will develop maintenance responsibilities and arrangements for accomplishing the work. Seller must agree to this plan. If the commercial users cannot agree on maintenance responsibilities, Seller shall resolve the differences.

(9) If Purchaser elects to use different roads than those documented on the Sale Area Map or those listed in this par.18.a, Seller shall determine Purchaser's commensurate share of road maintenance.

(10) Unless agreed in writing, pre-haul maintenance shall be completed on any portion of road prior to hauling on that portion. Maintenance, as used in this Contract, does not include road reconstruction or repairs of an extraordinary nature.

(11) Roads and landings shall be graded or closed upon the request of and to the Seller's satisfaction upon completion or termination of this Contract.

(12) Berms constructed on Forest Service land shall be leveled to restore the area to the Seller's satisfaction unless they are constructed at the direction of the Seller.

(13) Temporary Roads. As necessary to attain stabilization of roadbed and fill slopes of Temporary Roads, Purchaser shall employ such measures as out-sloping, drainage dips, and water-spreading ditches. After a Temporary Road has served Purchaser's purpose, Purchaser shall give notice to Seller and shall remove bridges and culverts, eliminate ditches, out-slope roadbed, and remove ruts and berms. Purchaser shall effectively block the road to normal vehicular traffic at the direction of the Seller where feasible under existing terrain conditions, and build cross ditches and water bars, as directed by the Seller. When bridges and culverts are removed, associated fills shall also be removed to the extent necessary to permit normal maximum flow of water.

(14) Purchaser is authorized to cut and use for construction timber designated by agreement.

- (15) Use by Others. Forest Service and Seller shall have the right to use any road constructed by Purchaser under this Contract for any and all purposes in connection with the protection and administration of the National Forest. Other parties, in connection with the logging of tributary National Forest timber, may use roads constructed by Purchaser hereunder when Seller determines that such use will not materially interfere with Purchaser's operations. Third party use shall be contingent upon Seller determining, and third party agreeing to pay, a fair share of maintenance cost commensurate with such commercial use.
- (16) Unless otherwise provided in this Contract, Seller shall authorize other commercial uses of roads constructed by Purchaser hereunder only if:
- i. Seller makes appropriate arrangements to relieve Purchaser of related maintenance costs commensurate with such other uses and
 - ii. Such other uses will not materially interfere with Purchaser's operations.
- (17) Purchaser shall keep roads and trails needed for fire protection or other purposes and designated on Sale Area Map reasonably free of equipment and products, slash, and debris resulting from Purchaser's operations. Purchaser shall make timely restoration of any such improvements damaged by Purchaser's operations and, when necessary because of such operations, shall move such improvements.
- b. All logging debris accumulated at landing areas, including bark, tops and slash, shall be scattered within the sale area to the satisfaction of the Seller.
- c. Slash that has entered into designated trail right of ways, parking lots, woods roads, and other designated use areas shall be removed on a daily basis and scattered within the sale area to the satisfaction of the Seller.
- d. Other restoration requirements (e.g., seeding, gravel, rutting, culvert removal, etc.):
- a. Chequamegon-Nicolet Forest Plan requires that all native surfaced approaches to paved or graveled roads have 100 ft. of gravel, 6 in. deep and 12 ft. wide put down when used during non-frozen conditions.
- e. Best Management Practice (BMP) requirements and other Guidelines:
- (1) The Purchaser shall comply with all recommended BMPs for Water Quality guidelines as described in "*Wisconsin's Forestry Best Management Practices for Water Quality*" published by the Wisconsin Department of Natural Resources, publication Pub-FR-093, unless specifically provided otherwise below. A copy of this publication is available upon request to the Seller if not possessed by the Purchaser. Purchaser's certification in Wisconsin BMP training or equivalent through a FISTA-coordinated BMP workshop is also required.
 - (2) The Purchaser shall make every attempt to comply with Forestry BMPs for Invasive Species as described in "Wisconsin's Forestry Best Management Practices for Invasive Species" published by the Wisconsin Department of Natural Resources, publication Pub-FR-444-09 unless specifically provided otherwise below. In particular, the Purchaser agrees to work cooperatively with the administering forester and any subcontractors to address the considerations in BMPs 4.4, 4.5, 4.6, 5.1, 5.2, 5.3, 5.5 and 9.1. A copy of this publication is available upon request to the Seller if not possessed by the Purchaser. The publication can also be found at the Council on Forestry website at: <https://councilonforestry.wi.gov/Pages/InvasiveSpecies/Forestry.aspx>. Purchaser agrees to scrape or brush soil and debris from exterior surfaces, to the extent practical, to minimize the risk of transporting propagules
 - (3) The Purchaser shall comply with all General Guidelines as described in "*Wisconsin's Forestland Woody Biomass Harvesting Guidelines*" published by the Wisconsin Department of Natural Resources, publication Pub- FR-435-09, unless specifically provided otherwise below. A copy of this publication is available upon request to the Seller if not possessed by the Purchaser. The publication can also be found at the Council on Forestry website at: <https://councilonforestry.wi.gov/Documents/WoodyBiomass/BHGFieldManual.pdf>

(4) Other:

19. SOIL DISTURBANCE AND RUTTING

- a. The Purchaser agrees to take all steps and precautions to avoid and minimize soil disturbances, such as soil compaction and rutting. If soil disturbances occur, the Purchaser agrees to work cooperatively to mitigate and repair any and all instances of soil disturbance.
- b. Excessive soil disturbance (as defined in Table 1) shall not be permitted. Purchaser agrees to contact Seller in the event of an excessive soil disturbance.

Table 1. Thresholds for soil disturbances.

<u>Timber Sale Infrastructure</u>	<u>Soil disturbances are excessive if:</u>
<u>Roads, Landings, Skid Trails, and General Harvest Area</u>	<ul style="list-style-type: none">▪ A gully or rut is 6 inches deep or more and is resulting in channelized flow to a wetland, stream, or lake.
<u>Roads, Landings, and Primary Skid Trails</u>	<ul style="list-style-type: none">▪ In a riparian management zone (RMZ) or wetland, a gully or rut is 6 inches deep or more and 100 feet long or more.▪ In an upland area (outside of RMZ), a gully or rut is 10 inches deep or more and 66 feet long or more.
<u>Secondary Skid Trails and General Harvest Area</u>	<ul style="list-style-type: none">▪ A gully or rut is 6 inches deep or more and 100 feet long or more.

Note: The depth is to be measured from the original soil surface to the bottom of the depression. If individual lug depressions are visible, the depth would be measured to the lesser of the two depths (the "top" of the lug). The length is measured from the start of the "too deep" section to the end of the "too deep" section. Measurements are not cumulative.

- c. Prior to sale completion the Purchaser shall mitigate and repair soil disturbances to the Seller's satisfaction.
- d. Other restoration requirements (e.g. repair of soil disturbance or rutting on recreational trails used for skidding):
 - (1)
 - (2)

20. OTHER APPROVALS. Logging roads that intersect town, county or state roads or highways must have the intersections approved by the proper authorities prior to construction and cleared of all unsightly debris at the time of construction. The Purchaser agrees to apply for and obtain all approvals. The Purchaser also agrees to fully comply with all terms and conditions of intersection and other types of approvals.

21. SURVEY MONUMENTS. The Purchaser agrees to comply with s. 59.635, Wis. Stats., regarding perpetuation of landmarks and pay for the cost of repair or replacement of property or land survey monuments or accessories which are removed, destroyed or made inaccessible. If any known monuments, corners, or accessories are destroyed, obliterated, or damaged by Purchaser's operations, Purchaser shall notify Seller. Purchaser shall hire the appropriate county surveyor or a registered land surveyor to reestablish or restore at the same location the monuments, corners, or accessories. Such surveyors shall use procedures in accordance with the Bureau of Land Management "Manual of Instructions for the Survey of the Public Lands of the United States" for General Land Office surveys and in accordance with State law for others. Purchaser shall record such survey in appropriate county records.

22. INDEMNIFICATION. The Purchaser agrees to protect, indemnify and save harmless the Seller and the Seller's employees and agents from and against all causes of action, claims, demands, suits, liability or expense by

reason of loss or damage to any property or bodily injury to any person, including death, as a direct or indirect result of operations under this Contract or in connection with any action or omission of the Purchaser, who shall defend the Seller and the Seller's employees and agents in any cause of action or suit.

23. **INDEPENDENT CONTRACTOR.** The Purchaser is an independent contractor for all purposes, including worker's compensation, and not an employee or agent of the Seller. The Seller agrees that the undersigned Purchaser shall have the sole control of the method, hours worked, time and manner of any timber cutting to be performed hereunder and takes no responsibility for supervision or direction of the performance of any of the harvesting to be performed by the undersigned Purchaser or of the Purchaser's employees except for the limited right of the Seller to cease operations under clause 2.b. or for breach of this Contract. The Seller further agrees it will exercise no control over the selection and dismissal of the Purchaser's employees.
24. **INSURANCE; NOTIFICATION.**
 - a. Unless the Purchaser is exempted by the Seller from this coverage requirement as an independent contractor, as defined in s. 102.07(8)(b), Stats., and as determined by the Seller based on an affidavit submitted to it, the Purchaser agrees to elect to maintain worker's compensation insurance coverage for the cutting operation under this Contract and any and all employees engaged in cutting on Forest Service Land during the period of this Contract regardless of any exemptions from coverage under chapter 102, Wis. Stats.
 - b. Other insurance requirements:
 - c. Prior to commencement of any work under this Contract and during the period of the Contract, the Purchaser shall provide proof of insurance coverage required by this Contract on an original Certificate of Insurance, counter-signed by an insurer licensed to do business in Wisconsin naming the Seller as a Certificate Holder.
 - d. The Purchaser shall notify the Seller in writing at the Seller's office as indicated in the Contract or otherwise in writing by the Seller, immediately upon any change in or cancellation of insurance coverage required by this Contract.
25. **NONDISCRIMINATION.** In connection with performance of work under this Contract, the Purchaser agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, sex, handicap, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; pay rates or other forms of compensation; and selection for training, including affirmative action to ensure equal employment opportunities. The Purchaser agrees to post in a conspicuous place available for employees and applicants for employment, notices to be provided by the Seller setting forth the provisions of this nondiscrimination clause.
26. **AFFIRMATIVE ACTION PLAN.** Contracts estimated to be fifty thousand dollars (\$50,000) or more require the submission of a written affirmative action plan. Purchasers with a work force of less than fifty (50) employees are exempted from this requirement.
27. **ASSIGNMENT.**
 - a. The Purchaser is precluded from assigning payment and Contract oversight, duties or other performance requirements of this Contract to another. The Purchaser's direction to or contracting with another to complete performance required under this Contract does not relieve the Purchaser from the responsibility for performance required under this Contract or for liability for breach. The Seller reserves the right to prohibit a particular sub-contractor from performance of this Contract if it is deemed in the Seller's best interest, as determined by the Seller based on past performance by the subcontractor on federal forest, county, or state administered timber sales or civil or criminal timber theft citations.
 - b. The Seller may assign responsibility for administering this Contract on behalf of the Seller to another at the sole discretion of the Seller, including to the Forest Service, to a county forestry department, or to a consulting forester hired by the Seller. In such an instance, the assigned Contract administrator may be assigned responsibility and authority to administer any provision of this Contract. In any case of conflict between the Purchaser and an assigned sale administrator, the Purchaser shall contact the Seller for resolution.

28. ENTIRE CONTRACT. This Contract shall constitute the entire agreement of the parties and any previous communications or agreements are hereby superseded and that no modifications of this Contract or waiver of its terms and conditions shall be effective unless made in writing and signed by the parties.
29. CONTRACTING PARTIES.
- a. In this Contract, the Seller and the Purchaser include their respective officers, employees, agents, directors, partners, representatives, successors, heirs, members and servants.
 - b. If the Purchaser ceases to exist, in fact or by law, the Seller may terminate this Contract without waiving any remedies available to it and take all action necessary to assure its performance.
30. INSPECTION. The Seller retains for itself the right of ingress and egress to and on the sale area and may inspect the sale area and trucks hauling forest products from or traveling on the sale area at any time. If the inspection reveals any violations of this Contract, the Purchaser shall promptly take measures to remedy the violation. The Seller may terminate the Purchaser's operations upon oral notice to the Purchaser. Upon receipt of the notice, the Purchaser shall cease operations until the Seller approves resumption of them.
31. The Purchaser has no access or privilege to go upon Forest Service land other than to comply with this Contract and may not authorize access or use to others except for the sole purpose of performing this Contract.
32. SCALING AND CONVERSION FACTORS.
- a. When peeled cordwood is measured, it is agreed that 12.5% will be added to hand-peeled or stroke delimeter/processor peeled volume and 16% to ring debarked volume.
 - b. The Scribner Decimal C Log Rule shall be used for scaling logs.
 - c. Conversion of MBF (thousand board feet) to cords or cords to MBF shall be 2.44 cords per MBF for softwoods and 2.20 cords per MBF for hardwoods.
33. APPLICABLE LAW. This Contract shall be governed by the laws of the State of Wisconsin. The Purchaser shall at all times comply with all federal, state and local laws, ordinances and regulations in effect during the period of this Contract.
34. SAFETY.
- a. Utilities. The Purchaser is responsible to contact the digger's hotline, the controlling utility company, and/or other informational sources performing similar services, prior to digging or conducting other activities on the Forest Service property which may result in contact with utility or service lines or facilities.
 - b. OSHA Compliance, Danger trees. The Purchaser is responsible to comply with, and assure compliance by all employees or subcontractors with, all Occupational Safety and Health Act (OSHA) requirements for the health and safety of Purchaser's employees, including provisions relating to danger trees. In addition, the Purchaser agrees to notify, and obtain agreement from, the Seller if the Purchaser intends to modify performance required under this Contract for the purpose of compliance with OSHA requirements.
35. EXCESSIVE DAMAGE.
- a. The Purchaser agrees to take all steps and precautions to avoid and minimize damage to timber or other forest products not specifically described in this Contract or designated by the Seller for cutting.
 - b. Excessive damage shall not be permitted. Purchaser agrees to contact Seller in the event of an excessive damage situation.
 - c. Damage to individual trees is defined as one or more of the following as determined by the Seller:
 - (1) Any tree measuring at least 5 inches and no more than 14 inches DBH with more than 25 square inches of bark removed
 - (2) Any tree larger than 14 inches DBH with more than 50 square inches of bark removed

- (3) Any tree with more than 25% of the crown destroyed by logging operations
 - (4) Any tree with more than 25% of the root area exposed or severed within the drip line of the tree's crown
 - (5) Any live bole or tree entirely broken off by logging operations
 - (6) Any tree tipped more than 10 degrees from its vertical position by logging operations
- d. As used in this Contract, excessive damage occurs where either:
- (1) 5% or more of the individual trees in the sale area are damaged, and/or
 - (2) Bark removal on tree boles or main stems sum more than 200 square inches per acre in the sale area. For purposes of this determination, all debarked patches greater than 1 square inch on trees larger than 5 inches DBH are considered.

36. PROTECTION OF PROPERTY AND IMPROVEMENTS:

- a. Purchaser shall protect from damage roads and other improvements of the Seller or Forest Service (such as roads, trails, telephone lines, ditches, fences, signs, buildings, etc.):
 - (1) Existing in the operating area, and
 - (2) Determined to have a continuing need or use, as determined by the Seller.
- b. Purchaser shall not unnecessarily remove, deface, injure, or destroy trees, shrubs, or other natural features, unless specifically authorized. To the extent practicable, Purchaser shall confine operations to within the areas designated in the Contract and prevent the depositing of rocks, excavated materials, stumps, slash, or other debris outside these areas. Material that falls outside these areas shall be retrieved, disposed of, or incorporated in the work to the extent practicable and necessary to protect adjacent resource values, unless otherwise agreed.
- c. Purchaser shall protect from damage property and improvements not owned by the Seller or Forest Service (such as trees, roads, trails, telephone lines, ditches, fences, signs, buildings, etc.):
 - (1) When Purchaser's operations are adjacent to properties of railway, telephone, or power companies, or other property, work shall not begin until Purchaser has identified actions necessary to prevent damage.
 - (2) Purchaser shall cooperate with the owners of any underground or overhead utility lines in their removal and/or rearrangement operations in order that these operations may progress in a reasonable manner, utility duplication or rearrangement work may be reduced to a minimum, and services shall not be unnecessarily interrupted.
 - (3) In the event of interruption to utility services because of accidental breakage or as a result of lines being exposed or unsupported, Purchaser shall promptly notify the proper authority and shall cooperate with that authority in the restoration of service until the service is restored.
 - (4) When materials are to be hauled across and utility right-of-way or the tracks of any railway, Purchaser will make arrangements with the utility company or railroad for the use of any existing crossing or for any new crossing required. All construction work to be performed by Purchaser on the right-of-way shall not damage railroad, utility company, Seller, or Forest Service property.

37. PROTECTION OF PLANTS, ANIMALS, CULTURAL RESOURCES, AND CAVE RESOURCES:

- (a) Areas, known by Seller prior to timber sale advertisement, needing special measures for the protection of plants, animals, cultural resources, and/or cave resources are shown on Sale Area Map and/or identified on the ground, and shall be treated as follows:
 - (1) Unless agreed otherwise, wheeled or track laying equipment shall not be operated in areas identified as needing special measures except on roads, landings, or skid trails approved by the Seller. Purchaser may be required to backblade skid trails and other ground disturbed by Purchaser's operations within such areas in lieu of cross ditching required under the Contract. Additional special protection measures needed to protect such known areas are identified in (e) below.
 - (2) Unless agreed otherwise, trees will not be felled into areas identified as needing special measures.
 - (3) Purchaser shall conduct operations in a manner that does not damage or disturb identified areas. In the event that protective measures identified by the Seller are for any reason inadequate, Seller may delay or interrupt Purchaser's operations, under this Contract, and/or modify this Contract pursuant to par. 2.(b) or terminate this Contract pursuant to par. 4.

- (4) Purchaser shall immediately notify the Seller if its operations disturb or damage any area identified as needing special protection, and shall immediately halt its operations in the vicinity of such area until the Seller authorizes continued operations. In the event that Purchaser's operations disturb or damage an area identified as needing special protection, then Purchaser shall reimburse the Seller for the full cost and expense of any evaluative and remedial measures undertaken by the Seller or the Forest Service in connection with such disturbance or damage. Such payment shall not relieve Purchaser from civil or criminal liability under applicable law.
- (b) Nothing contained in this Subsection shall establish, or be deemed to establish any express or implied warranty on the part of the Seller (i) that the Seller has identified all areas within the Sale Area requiring special protection, or (ii) that measures prescribed by the Seller for protection of such areas are adequate.
- (c) Following sale advertisement, additional areas needing special measures for protection may be discovered or identified; protective measures may be revised or newly prescribed; and, additional species of plants and/or animals may be added to federal or state lists of protected species. In such event, Seller may delay or interrupt Purchaser's operations, under this Contract, and/or modify this Contract pursuant to par. 2.(b) or terminate this Contract pursuant to par. 4.
- (d) Discovery, by either the Purchaser or the Seller, of additional areas, resources, species, or members of species needing special protection shall be promptly reported to the other party.
- (e) Site Specific Special Protection Measures. Special protection measures needed to protect known areas identified on Sale Area Map or on the ground include:
- (1) Cultural Resource Protection Measures:
- (2) Wildlife and Botanical Protection Measures:
- (3) Cave Resource Protection Measures:
38. DEBARMENT AND SUSPENSION. Purchaser may not enter into this Contract at any time that they are debarred or suspended from entering into Federal contracts. Purchaser must submit USDA Form AD-1048 to Seller prior to signing this Contract and must submit immediate written notice to Seller if Purchaser learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Seller will verify Purchaser's status utilizing the Systems for Award Management (SAM), www.sam.gov.
39. FELONY CONVICTION. Purchasing corporation may not have been convicted of a felony criminal violation under any Federal law within the 24 months preceding signing of this Contract nor have unpaid Federal tax liability. Corporation or their principals subject to this requirement shall provide the appropriate certifications, including submittal of USDA Form AD-3031 prior to signing this Contract, as required by the Seller.
40. OTHER CONDITIONS: *(include if applicable)*
- a. *Release of Mill Records. The Purchaser agrees that mill slips or records respecting timber from the Seller's sale area, are to be released to the Seller upon Seller's request, and that the Purchaser will execute any letter or form of the Purchaser to that effect upon Seller's request.*
- b. Heterobasidion Root Disease (HRD) Treatment. This sale requires the Purchaser to complete HRD preventive treatment 4/1-11/30. Treatment must be performed by a Certified Pesticide Applicator. Treatment involves treating all fresh-cut stumps of pines and spruce of merchantable size by applying either CELLU-TREAT (disodium octaborate tetrahydrate) or Rotstop C (*Phlebiopsis gigantea*). Treatment shall be made as soon as possible and no later than one day after harvest. A dye product shall be added to liquid solutions for inspection purposes. The cost of this application can vary based on application method and harvest conditions, but should be considered when submitting bids on these timber sales.
- c.
41. LIABILITY FOR LOSS. If timber is destroyed or damaged by an unexpected event that changes the nature of timber, such as fire, wind, flood, insects, disease, or similar cause, the party holding title shall bear the timber value loss resulting from such destruction or damage; except that such losses caused by insect or disease after felling of timber shall be borne by Purchaser. Deterioration or loss of value of salvage timber is not an unexpected event and Purchaser shall bear any timber value loss.
- In the event timber to which Forest Service holds title is destroyed, as determined by Seller, Purchaser will not be obligated to remove and pay for such timber. In the event Included Timber to which Forest Service holds title is damaged, as determined by Seller, the State National Forest Liaison shall make an appraisal to determine for each species the difference between the appraised unit value of timber immediately prior to the value loss

and the appraised unit value of timber after the loss. Current contract rates in effect at the time of the value loss shall be adjusted by the differences to become the redetermined rates.
This subsection shall not be construed to relieve either party of liability for negligence.

ATTACHMENTS. Any and all attachments to this Contract shall be made a part of this Contract and be fully complied with, including:

- a. Prospectus, including map(s) or diagrams(s) of Sale Area;
- b. Payment Schedule and Conditions of Payment;
- c. *(If Applicable) – Road design and construction specifications.*
- d.

SELLER

Date _____

By _____

PURCHASER

Date _____

By _____

Withhold personal identifiers collected on this form from disclosure on any list of 10 or more individuals that the DNR is requested to provide to another person. [s. 23.45(2) and (3), Wis. Stats.]