

## COMMERCIAL USE CONTRACT

This Medium Scale Commercial Use Contract (the "Agreement") is made and entered into this 27<sup>th</sup> of February AD 2021 by and between:

- 1) The People of Central Morweh Authorised Forest Community of Central Morweh Chiefdom, (Sameria Town, Kporkon Town, Isaac town, Boegezzay Town, Boe Town, Boedayogar Town, Funny Town, and Dorzhon Town in Doedain Administrative District, Morweh Statutory District, Rivercess County) represented by the Central Morweh Community Forest Management Body (herein referred to as the "CFMB") by and through Mr. Clinton B. Cephus, Chief Officer;

AND

- 2) Kisvan Timber Corporation, (herein referred to as the "Company") a duly registered Corporation operating under the laws of the Republic of Liberia, whose principal place of business/ office is located at Logan Town, Bushrod Island Montserrado County, Republic of Liberia, represented by Mr. Kishore Gurbani, CEO.

### WITNESSETH

#### WHEREAS:

#### 1. CONTEXT

- 1.1. The people of Central Morweh Authorised Forest Community are the owners of the Central Morweh Community Forest and have the right to access, manage, use and benefit from their Community Forest located in Central Monweh Clan, Doedain Administrative District, Morweh Statutory District, Rivercess County, Republic of Liberia. The Community Forest Management Agreement ("CFMA") concluded by the Community with the Government of Liberia, by and through the Forestry Development Authority (FDA) provides for the sustainable management and use of the Community Forest resources in line with the Forestry Laws in meeting the needs of the present community members without compromising the ability of future generations to meet their own needs;
- 1.2. The CFMB, as the body authorized to negotiate and sign commercial use contracts, having duly selected the Company with which this contract is to be executed in accordance with its constitution and by-laws, and after having duly consulted and been granted authorization by the Community Assembly and Executive Committee of the Community, is willing to enter into a commercial use contract with the Company.
- 1.3. The Company has affirmed to the CFMB through documentation and other communications that it has the required qualifications to engage in forestry operations as promulgated by the FDA consistent with section 5.2 of the National Forestry Reform Law ("NFRL") and is authorized to engage in commercial logging in Liberia; and
- 1.4. Considering the potential for local economic benefits, development and employment to be derived by the Community from sustainable commercial logging in its forest, the CFMB has agreed to execute this Agreement with the



review and approval of the FDA and consistent with the (2017) amended Regulation to the Community Rights Law with respect to Forest Lands ("CRL").

**NOW THEREFORE**, in consideration of the covenants, agreements and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant, contract and agree as follows:

## **2. INTERPRETATION AND ADDITIONAL DETAIL IN ANNEX A**

- 2.1. This Agreement shall be interpreted in line with the CRL (2009), the NFRL (2006) and their implementing regulations as well as other relevant laws and regulations.
- 2.2. Provisions included in this Agreement are completed by detailed terms and conditions included in Annex A hereof and which form an integral part of this Agreement.
- 2.3. Where the FDA fixes additional or stricter conditions in the Guidelines for Community Forest Management Planning or in other regulatory documents, those will apply in addition to or instead of any provision in this Agreement.

## **3. RIGHT TO EXTRACT/SELL LOGS:**

- 3.1. That in consideration of the payments, benefits and other stipulations and covenants hereinafter to be paid, performed and kept by the Company, the Community, represented by the CFMB, hereby grants the Company the right to enter into, harvest, extract, and sell wood products from merchantable species of trees in 19, 091 hectares of the Central Morweh Authorized Community Forest.
- 3.2. A map depicting the metes and bounds of the agreed area of Community Forest set aside for commercial timber harvesting under this Agreement is incorporated at Annex B to form a part of this Agreement.

## **4. TERM CERTAIN**

- 4.1. The term of this Agreement, that is the period within which the Company shall have the right to enter into, harvest, extract and sell logs from the Community Forest shall cover the period of the present CFMA; commencing immediately upon the signing of the Agreement by the Central Morweh Community and the Company. The period of this Agreement shall therefore not exceed 15 years.
- 4.2. It is mutually agreed that this Agreement shall be subject to periodic review by the Parties hereto during the life of the Agreement. Reviews are scheduled every five years.
- 4.3. As part of the review process, the Parties can renegotiate the terms of this Agreement. If no renegotiated agreement is reached, operations under this Agreement shall be suspended and either Party can initiate the dispute resolution mechanism referenced in clause 15 of the Agreement.
- 4.4. In the year preceding the expiration of the Term certain granted in section 4.1 above, and after a review of the implementation of this Agreement, the Parties may renew this Agreement upon agreed terms and conditions



- 4.6. No renewal can be negotiated if the renewal period is not covered by a valid CFMA. All renewal shall be subject to the approval of the FDA.

## 5. PAYMENTS AND PAYMENT TERMS

- 5.1. **Land Rental fees:** The Company shall pay 55% of the total annual land rental fee which shall be USD \$1.25/ha directly to the Community. The 55 % land rental fee payable directly to the Community annually shall be \$US 13,125.625 per year.
- 5.2. **Cubic meter fees:** The Company shall, on a quarterly basis, pay USD\$3.00 per cubic meter of logs harvested as reflected in the tree data forms and the production record, regardless of whether or not the logs are subsequently transported and sold. For the payment of the cubic meter fees, the amount of cubic meter per log will be determined using the formula included in Annex C to this Agreement.
- 5.3. **Monitoring and protection payments:** The Company will transfer **USD\$ 6,000.00 (Six Thousand United States Dollars)** per quarter to the Community to enable the employment of community Forest Guards in support of the implementation of this Agreement. The CFMB shall be responsible for the recruitment and employment of these community Forest Guards.
- 5.4. **Human resource training and development:** The Company agrees to transfer **USD \$6,000.00 (Six Thousand United States Dollars) annually** to support education of students from the Community. The first payment shall be made on the 22<sup>nd</sup> day of March in every year of the implementation of this agreement
- 5.5. **Support for Health Care Services:** The Company agrees to transfer **USD \$5,000.00 (Five Thousand United States Dollars) annually** to support health care services in the Community. The first payment shall be made on the 22<sup>nd</sup> day of March in every year of the implementation of this agreement.

## 6. LOCAL EMPLOYMENT AND TRAINING

- 6.1. The company agrees to give first preference to the Community for employment in skilled and unskilled job opportunities and a representation in middle management to residents of the Community.
- 6.2. The company shall afford equal opportunities for employment to women.
- 6.3. The Company shall respect the rights of its employees consistent with the Decent Work Act (2015) and other labour laws of Liberia, especially in relation to minimum wage, workers' health and safety and paid leave. Employees who suffer occupational illness, injuries or disability shall receive adequate compensation as defined in the Decent Work Act.
- 6.4. The Company shall respect the health and safety requirements included in the Decent Work Act and the Code of Harvesting Practices.
- 6.5. The Company agrees to provide, on a continuing basis, adequate training in order to qualify members of the Community for skilled, technical, administrative and managerial positions.

## 7. ROADS AND COMMUNITY INFRASTRUCTURE



1	Road from Boegeezay Town to Sameria Town.	Logging season 2021	End logging season 2022
2	Construct road from Mrdeh Town to Boedayougar Town	Logging season 2021	End logging season 2023
3	Concrete or Metal Bridge over Duahn Creek on the road from Boegeezay Town to the Kporkon.	Logging season 2021	End logging season 2024
4	Concrete or Metal Bridge over Guahn on the road from Boegeezay Town to Kporkon	Logging season 2022	End logging season 2024
5	Concrete or Metal Bridge over Nepu Creek on the road from Boegeezay Town to Kporkon.	Logging season 2022	End logging season 2024

7.2. The Company agrees to maintain all roads in the area covered by this Agreement and to allow the Community to use, free of charge, any roads constructed and/or maintained by it. The Company shall make sure that roads remain in passable condition for other vehicles to be able to safely use.

7.3. The Company agrees to build the following community infrastructure:

	Location:	Starting date:	Completion date*:	Estimated total cost
<b>Hand pumps</b>				
The Company agreed to build 16 hand pumps for the eight affected communities during the first year of operation.				
1	Sameria Town,	December 1, 2021	March 1, 2022	US\$2,000.00
2	Kporkon Town,	December 1, 2021	March 1, 2022	US\$2,000.00
3	Isaac town	December 1, 2021	March 1, 2022	US\$2,000.00
4	Boegezzay Town	December 1,2021	March 1,2022	US\$2,000.00
5	Boe Town	December 1, 2021	March 1, 2022	US\$2,000.00
6	Boedayogar Town	December 1, 2021	March 1, 2022	US\$2,000.00
7	Funny Town	December 1, 2021	March 1, 2022	US\$2,000.00
8	Dorzhon Town	December 1, 2021	March 1, 2022	US\$2,000.00
<b>Schools</b>				
1	Ten class rooms	December 31, 2021.	December	USD \$ 40. 000.00



- a) shall fulfil all legally-required pre-conditions to concluding this Agreement, as per the CRL and all other relevant laws and regulations;
- b) shall provide a list of CFMB members to the Company. The Executive Committee, upon the instructions from the Community Assembly, will communicate any change of membership of the CFMB in writing to the Company;
- c) agree not to engage in the felling or damaging of marketable tree species and agree not to clear land for farming in areas designated for commercial timber exploitation under this Agreement;
- d) agree to provide a peaceful working relationship between the Community and the Company and will not use violence nor cause damage to interrupt the lawful operation of the Company;
- e) agree to inform the Company of all relevant cultural norms and practices currently practiced by the Community to ensure compliance;
- f) shall represent and warrant that the CFMB has the legal authority to execute this Agreement, on the Community's behalf; and
- g) shall represent and warrant that there is no pending administrative or civil litigation involving the Community, nor any demands or claims that would materially and adversely affect the Company's rights under this Agreement.
- h) The Community agrees for the Company to select sites near existing towns (or suitable designated areas) to build its camps and a Modern Sawmill.

10.2. Company's Obligations: The Company:

- a) shall be responsible for complying with Chain of Custody and Legality Assurance System requirements under the Voluntary Partnership Agreement between Liberia and the European Union, when and where applicable;
- b) shall post an annual performance bond totalling the cost of one year of all payments provided for in this Agreement;
- c) will take reasonable and proper care in carrying out its activities and shall avoid deliberately or negligently causing damage;
- d) shall ensure that timber operations will be timed and organised to minimize disruption to subsistence agriculture and cash/food crop production;
- e) shall preserve and protect non-timber forest products, wildlife, water collection points and respect cultural norms and practices;
- f) shall share and co-sign a copy of the record of production mentioning the total amount of logs harvested, their average diameter, length and their volume (calculated according to the formula included in Annex C) and Chain of Custody tracking number at the end of each month. Details provided in the production record shall be consistent with data recorded in the tree data forms;
- g) agrees to provide transportation to the Communities during emergency situations, including but not limited to medical emergencies and natural disasters. Where possible the Company shall endeavour to also provide rescue shelters.
- h) Agrees to construct a modern saw mill within a place designated by the community members before carrying on any logging activity.



## **11. PLANNING, MONITORING AND IMPLEMENTATION**

11.1. The Company shall develop and submit the following planning documents:

- a) A strategic forest management plan
- b) 5-year operational plan
- c) Annual operational plan

11.2. The CFMB shall employ community Forest Guards to monitor all field activities of the Company and to raise awareness and report any illegal pit/chain sawing, fires or other activities causing damage to timber trees. At the end of each month the community Forest Guards, and the Company will co-sign the production record mentioned in 10.2(f) above.

11.3. The Company shall convene and finance an inception meeting no later than one month after the signature of this Agreement.

11.4. The Company shall convene and finance quarterly and annual meetings to discuss progress in and planning for the implementation of this Agreement.

## **12. ASSIGNMENT AND TRANSFER OF CONTRACT**

12.1. With the exception of obligations mentioned under 9.2 of the detailed terms to this Agreement, the Company shall not subcontract timber operations, or any other of its rights or obligations under this Agreement to any of its affiliate companies, fourth parties or operators, except as provided in section 12.2 and 12.3 below.

12.2. Where the Company wants to subcontract minor parts of its operations, this is subject to prior written consent of the CFMB and the FDA and the Company shall remain liable for the fulfilment of all obligations under this Agreement.

12.3. The Company can transfer its rights and obligations under this Agreement to another party only in its entirety and after written authorisation by the FDA and by the CFMB. The transfer of contract will be executed through signature of a new Agreement between that new Company and the CFMB.

## **13. USE OF LIBERIAN GOODS AND SERVICES:**

The Parties mutually agree that the Company, to the maximum extent possible, shall give preference to material and goods manufactured in Liberia when purchasing such materials and goods; and engage Liberian citizens or Liberian Corporations in the provision of services.

## **14. DAMAGES**

14.1. The Company and CFMB agree that damages for delays in implementing this Agreement by the Company are equivalent to the amounts mentioned in Annex A.

14.2. By entering into this Agreement, the Company assumes liability for any damage caused as a result of its operations or negligence.

## **15. ENFORCEMENT OF RULES AND DISPUTE RESOLUTION**



through the direct consultations and negotiations by and between the Parties shall be referred to arbitration by the affected Party.

- 15.2. The rights and duties of the Community and Company with respect to addressing violations and the procedure for direct consultations and negotiations are detailed in Annex A.
- 15.3. The Parties agree to submit disputes arising out of this Agreement, which cannot be solved amicably, to arbitration:
- a) Arbitration shall be conducted by an arbitral panel of three (3) persons. Each Party to this Agreement shall name one (1) arbitrator. The third arbitrator, who shall act as chairman of the arbitral panel, shall be the Managing Director of the FDA or his/her designated representative.
  - b) The arbitration shall be conducted in keeping with arbitral rules under Liberian laws. Each Party shall be responsible for and shall pay the fees and expenses of its appointed/designated arbitrator. The fees and expenses of the third arbitrator shall be shared on an equal basis by the Parties, while the remaining costs and expenses of the arbitration proceeding shall be assigned by the arbitral panel as it sees fit and shall be paid by the party adjudged liable to the other or in default of Agreement.
  - c) A decision by the majority of the arbitral panel shall be binding on the Parties and enforceable in a court of law without delving into the merit of the dispute or the award.
  - d) To invoke arbitration, a Party to this Agreement shall give written notice to the other Party, stating the nature of the dispute and appointing its arbitrator. The other Party must appoint its arbitrator and provide its responses to the dispute as stated by the Party giving the notice of arbitration within ten (10) days. After notice to the Chairman, the arbitral panel shall commence its work and shall work every day until a decision is arrived at and rendered.

## 16. TERMINATION

- 16.1. It is mutually understood by the Parties that this Agreement may be terminated under the following conditions:
- a) The Parties jointly can at any time terminate this Agreement by an agreement in writing duly stating the terms of termination;
  - b) The CFMB can terminate this Agreement by giving formal notice in the event the Company becomes insolvent or is the subject of a voluntary or involuntary bankruptcy petition;
  - c) The Company can terminate the Agreement without cause provided that:
    - it pays all obligations due to the Community represented by the CFMB;
    - it gives a written notice of not less than six (6) months specifying the date of termination;
    - the Community represented by the CFMB is not required to refund any payments or benefits already received in advance.
  - d) Either Party can terminate this Agreement...



Any Party deciding to terminate the Agreement shall inform the FDA through a written detailed communication of the purpose and details for terminating the Agreement.

#### 16.2. Upon termination of the Agreement

- a) any rights of the Parties which may have accrued, and any debts which were due before the end date shall not be affected;
- b) any future rights to the Community Forest for the Company will be relinquished;
- c) the CFMB will have the right to engage other interested party(ies) for commercial activities in the Community Forest.

### 17. FORCE MAJEURE

It is agreed that this Agreement may be suspended in the event of Force Majeure. Upon the cessation of the force majeure event, the performance of this Agreement shall resume, and the period of suspension shall be added to the term of this Agreement.

### 18. TAXES

The Company shall be responsible for paying all taxes, fees and levies related to the commercial timber exploitation activities by the Company on the Community Forest lands covered under this Agreement, including stumpage and land rental fees.

### 19. GOVERNING LAW

This Agreement is governed by the laws of the Republic of Liberia.

### 20. NOTICES

Notices shall be sent to the following addresses:

For Company:

Mr. Kishore Gurbani  
CEO  
Logan Town, Bushrod Island  
Montserrado County, Liberia.

For CFMB:

Mr. Clinton B. Cephus  
Chief Officer, Central Morweh,  
Dodain Administrative District  
Morweh Statutory District, Rivercess County, Liberia.

### 21. WAIVER:

The failure of either Party to insist upon a strict performance of any of the terms, covenants and conditions herein, or the waiver by either Party of any breach of any provision of this Agreement, shall not be deemed a waiver of any rights or remedies of either Party and shall not be deemed a waiver of any other breach of any terms, conditions, covenants and provision or any similar or other provision or condition of this Agreement.



**22. AMENDMENT/MODIFICATION:**

No amendment, modification or variation of this Agreement shall be valid unless evidenced by an agreement in writing duly signed by both Parties, and then only to the extent provided in such mutually signed written agreement.

**23. SEVERABILITY:**

The invalidity, illegality or unenforceability of any provisions of this Agreement shall not affect the continuation, force and or validity of the remainder of this Agreement.

**24. INTEGRATION:**

This Agreement, including all Annexes, constitutes all the negotiations, discussions and agreements between the Parties. All other prior oral and written discussions and agreements are superseded by this Agreement.


**25. BINDING EFFECT:**

This Agreement shall remain binding on the parties thereto, their successors-in-business, their heirs, assigns, attorneys-in-fact and/or agents, as though they participated in the negotiation of this Agreement.

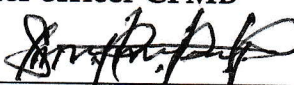
**26. SIGNATURES**

26.1. In witness whereof, we the parties hereto, here unto affix our signatures and seals on this 27<sup>th</sup> day of February A. D. 2021.

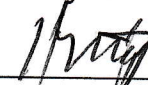
For the CFMB

Signature: 

Name: Clinton B. Cephus  
Chief officer CFMB

Signature: 

Name: Victor Robertson  
Secretary CFMB

Signature: 

Name: Arnold Peter  
Treasurer CFMB

Signature: 

Name: Edith Z. Banna  
Member of CFMB

A. H. ...



Signature: James Gborde

Name: James Gborde  
Chairman, Executive Committee

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**For the Company**

Signature: [Signature]

Name: KISHORE GURBANI

Position: CEO ADMIN

Signature: [Signature]

Name: ETIOWALE VAW UNO

Position: C.O.O.

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**In the presence of:**

Signature: [Signature]  
Name: Martin A.T. Vesseloo  
C.S.O

Signature: [Signature]  
Name: J. Bismark Karbiak

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
**National Union of the Community  
Forest Management Bodies**

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**APPROVED BY FORESTRY DEVELOPMENT AUTHORITY**

Signature: [Signature]  
Name: C. Mike Doryen  
**Managing Director**



## **ANNEX A: DETAILED TERMS AND CONDITIONS**

### **1. DETAILED TERMS FOR CLAUSE 3: RIGHT TO EXTRACT/SELL LOGS:**

- 1.1. The right to extract and sell logs referred to under clause 3 of the Agreement shall be limited to a surface area mentioned under Section 3.1 of the Agreement, shall be confined to the commercial zones identified within the Community Forest Management Plan and shall be subject to all conditions mentioned in that plan, this Agreement, its annexes and relevant laws and regulations. Timber operations shall in addition be subject to the planning documents referenced in clause 11 of this Agreement.
- 1.2. The right to extract and sell logs does not include the right to extract and sell non-timber forest products. Any off-cuts and waste wood shall be made available to the community for local uses and charcoal production as the community decides.

### **2. DETAILED TERMS FOR CLAUSE 5: PAYMENTS AND PAYMENT TERMS**

- 2.1. As mentioned in clause 5.1 of this Agreement, the company shall pay 55% of the land rental fees for the total contract area directly to the Community and the Company shall remit a copy of the payment receipt to FDA for its records. The remaining 45% of the land rental fee shall be paid to the national government. Payment of land rental fees shall be made annually in advance. The first payment shall be made after the signing of this Agreement and before the inception meeting, at the latest within 1 month from the date of signing this Agreement. Subsequent payments shall be made before the annual meeting and at the latest on or before the last day of the month in which the Agreement was signed.
- 2.2. The cubic meter fees mentioned in 5.2 of the Agreement shall be paid on a quarterly basis on or before the last Friday of the quarter (before the quarterly meeting). The cubic meter fees will be calculated using the formula included in Annex C and based on tree information forms and the record of production which is co-signed by the Company and the community Forest Guard on a monthly basis (as per clause 10.2 of the Agreement and clause 8.2 of this Annex). All logs harvested for commercial purposes or for use by the Company, and whether or not harvesting was part of forest clearance for road building, shall give rise to corresponding payments of cubic meter fees.
- 2.3. Monitoring and protection payments mentioned in 5.3 of this Agreement shall be made in advance on a quarterly basis on or before the last Friday of the quarter (before quarterly meeting). The first payment shall be made before the inception meeting, at the latest within 1 month of the date of signature of this Agreement.
- 2.4. All payments shall be made by the Company into the account of the Community overseen by the CFMB. The details of this account shall be provided in writing by the CFMB within two weeks as of the signature of this Agreement. Payments in cash are not allowed.
- 2.5. Evidence of payment, that is the deposit slip or information on wire transfer, shall



## **TRAINING**

- 3.1. To realise and monitor preference for local employment mentioned in 6.1 and equal employment mentioned in 6.2 of the Agreement, hiring shall be done in collaboration with the CFMB. The Company shall inform the CFMB of planned hiring processes three (3) weeks ahead of any hiring taking place. The CFMB shall share employment opportunity information within the Community.
- 3.2. To encourage women to join the workforce, the Company and the CFMB shall raise awareness in the Community about employment opportunities being open to female candidates.
- 3.3. A list of all Community members employed or contracted by the Company which identifies their names, gender, position, number of completed months of service and type of employment contract shall be made available to the CFMB on a quarterly basis on or before the last Friday of the quarter (before quarterly meeting).
- 3.4. Adequate compensation for employees who suffer occupational illness, injuries or disability is defined in Schedule A of Section 30.3 of the Decent Work Act of 2015.
- 3.5. The Company shall not employ community members on short term contracts for periods exceeding three (3) months.

## **4. DETAILED TERMS FOR CLAUSE 7: ROADS AND COMMUNITY INFRASTRUCTURE**

- 4.1. Road construction and rehabilitation mentioned under 7.1 and 7.2 of the Agreement shall start with primary roads first. Where primary roads are (insufficiently) identified in the Community Forest Management Plan their identification will be included in the Company's 5-year operational plan. Road building shall be subject to quality and other standards applicable under the Code of Forest Harvesting Practices.
- 4.2. The bridges the Company agrees to build under 7.1 of the Agreement or in the 5 year operational plan shall be built in concrete and steel where these bridges are part of primary roads. Bridges shall, in addition, be subject to quality and other standards applicable under the Code of Forest Harvesting Practices.
- 4.3. Where the commercial operations require the construction of additional roads and/or bridges these will be planned for and agreed on as part of the 5 year and annual operational plans. The Company shall allow the Community to use any transport roads constructed and/or maintained by it free of charge. This does however not apply to skidding trails, which are not considered as roads and are not available for use by community members (except for collection of off-cuts and waste wood for firewood and charcoal production). Skidding trails and temporary bridges that do not connect with a town on the other side of the river shall be decommissioned and closed after operations.
- 4.4. The Company obligation included in clause 7.2 to ensure that roads (especially those used by logging trucks) remain in passable condition for other vehicles to be able to pass means that when the condition of the road makes it impossible for a standard vehicle to pass, repairs and maintenance shall be done within three (3) working days. Any delay beyond three (3) working days shall subsequently be



- the construction of hand pumps shall be done in accordance with the national WATSAN policy;
- the construction of schools shall be done according to Ministry of Education standards and will include the cost of furnishing these schools and the payment of qualified teaching staff for the duration of this Agreement.

4.6. The Company and Community may agree in the annual operational plan that community infrastructure be paid for by the Company but be built, staffed and maintained by the CFMB.

## 5. DETAILED TERMS FOR CLAUSE 8: SUSTAINABILITY

5.1. Company responsibility for sustainable management of the Community Forest areas subject to this Agreement as mentioned in clause 8 of the Agreement means that:

- a) Timber operations must at all times be in accordance with the Code of Forest Harvesting Practices, the Guidelines for Forest Management Planning (once approved) and the Community Forest Management Plan and cannot take place in areas zoned for multiple use (by the Community) or protection;
- b) The Company will practice reduced impact logging and limit harvesting to no more than 30m<sup>3</sup> per hectare. Data included in the tree data forms and production record shall be used to assess when this maximum has been reached;
- c) The Company shall provide for silvicultural measures including the protection of mother trees;
- d) No trees can be harvested under the minimum diameters included in Annex D to this Agreement;
- e) The Company is responsible for meeting all relevant environmental standards and requirements relating to timber harvesting consistent with the Liberia Code of Forest Harvesting Practices, all FDA rules and all other International Conventions to which Liberia is a party.

5.2. Animals protected by Liberian law as referenced in clause 8.2 of the Agreement shall include animals such as chimpanzees ("baboon"), hippos and crocodiles and any other species of plants or animals listed as protected consistent with the National Wildlife Conservation and Protected Area Management Act of 2016 or other legislations, regulations or treaties/conventions to which Liberia is a Party.. The prohibition of hunting further includes:

- a) the prohibition to use Company vehicles to transport bush meat or Company infrastructure to store or sell bush meat;
- b) the prohibition for all Company employees to carry firearms, ammunition, snares, nets or other hunting equipment;
- c) The prohibition to include bush meat in food provided by the Company to staff and workers.

5.3. The tree nursery mentioned under 8.3 of the Agreement shall produce commercial and indigenous timber species for replanting in degraded areas. The number of trees produced for replanting shall be equal to or more than four times the number of logs harvested on a yearly basis. The species and locations for replanting shall be determined in the annual operational plan. The Company



## **6. DETAILED TERMS FOR CLAUSE 9: REQUIREMENTS BEFORE COMMERCIAL FELLING**

6.1. Where the Company is required to conduct an Environmental Impact Assessment (EIA), this assessment shall be compliant with Section 24 (2) and Section 41 of Regulation 105-07 or its succeeding regulations.

## **7. DETAILED TERMS FOR CLAUSE 10: OTHER OBLIGATIONS OF THE PARTIES:**

7.1. The other obligations of the Company included under clause 10 of the Agreement are further detailed as follows:

- a) In execution of its responsibility for complying with Chain of Custody and legality assurance system requirements, the Company shall provide all required data for Liberia's Chain of Custody system ('LiberTrace') to the FDA, with a copy to the CFMB;
- b) The Performance Bond posted by the Company shall be procured from a reputable bank, valid until one hundred and twenty (120) days after the end of this Agreement and shall total the cost of one year of all payments provided for in this Agreement. The failure of the Company to uphold the payments or comply with its obligations as contained herein will result in the CFMB having grounds to seek indemnification from the bank where the performance bond has been posted;
- c) The Company obligation to take reasonable and proper care in carrying out its activities includes the obligation to take immediate action to cure or remedy any adverse impact its operations have on the Community and/or the environment. This also includes the obligation to use machines with rubber tires whenever possible;
- d) The Company obligation to minimize disruption to subsistence agriculture and cash/food crop production includes a prohibition to harvest palm trees and other types of non-timber trees of economic or cultural importance for any reason including processing, bridge construction or export. If operations affect existing agriculture, the farmer or any CFMB member can inform the Company who will stop operations until additional measures are taken to protect these agricultural activities. Where timber operations will necessarily damage crops or farms the Company shall agree with the farmer on fair compensation before the Company starts working in that area. During these negotiations, the farmer can be supported by the CFMB, NGOs and experts. Where any unexpected damage to food or cash crops occurs, the Company shall compensate the farmer according to the current market value of the crops which have been destroyed. In addition, if the crops which have been destroyed were expected to yield produce on multiple occasions over a longer period of time the compensation to be paid shall be the market value of the expected yield covering the time needed to re-grow those crops;
- e) The Company's obligation to preserve and protect non-timber forest products, water collection points and to respect cultural norms and practices includes a prohibition to conduct logging activities outside of the commercial area covered by this Agreement. It also includes an obligation to preserve and protect non-timber forest products, wildlife, water collection points and cultural norms and practices within the Community Forest, as identified in the Community Forestry Management Plan, the EIA and the annual operational plan. If any member of the Community



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7.1. The other obligations of the Company included under clause 10 of the Agreement are further detailed as follows:

- a) In execution of its responsibility for complying with Chain of Custody and legality assurance system requirements, the Company shall provide all required data for Liberia's Chain of Custody system ('LiberTrace') to the FDA, with a copy to the CFMB;
- b) The Performance Bond posted by the Company shall be procured from a reputable bank, valid until one hundred and twenty (120) days after the end of this Agreement and shall total the cost of one year of all payments provided for in this Agreement. The failure of the Company to uphold the payments or comply with its obligations as contained herein will result in the CFMB having grounds to seek indemnification from the bank where the performance bond has been posted;
- c) The Company obligation to take reasonable and proper care in carrying out its activities includes the obligation to take immediate action to cure or remedy any adverse impact its operations have on the Community and/or the environment. This also includes the obligation to use machines with rubber tires whenever possible;
- d) The Company obligation to minimize disruption to subsistence agriculture and cash/food crop production includes a prohibition to harvest palm trees and other types of non-timber trees of economic or cultural importance for any reason including processing, bridge construction or export. If operations affect existing agriculture, the farmer or any CFMB member can inform the Company who will stop operations until additional measures are taken to protect these agricultural activities. Where timber operations will necessarily damage crops or farms the Company shall agree with the farmer on fair compensation before the Company starts working in that area. During these negotiations, the farmer can be supported by the CFMB, NGOs and experts. Where any unexpected damage to food or cash crops occurs, the Company shall compensate the farmer according to the current market value of the crops which have been destroyed. In addition, if the crops which have been destroyed were expected to yield produce on multiple occasions over a longer period of time the compensation to be paid shall be the market value of the expected yield covering the time needed to re-grow those crops;
- e) The Company's obligation to preserve and protect non-timber forest products, water collection points and to respect cultural norms and practices includes a prohibition to conduct logging activities outside of the commercial area covered by this Agreement. It also includes an obligation to preserve and protect non-timber forest products, wildlife, water collection points and cultural norms and practices within the Community Forest, as identified in the Community Forestry Management Plan, the EIA and the annual operational plan. If any member of the Community



- 1) The copy of the record of production shared by the Company at the end of each month shall be co-signed by the Company (e.g. data clerk) and the community Forest Guard and will be handed over to the CFMB. The record of production shall be developed based on the tree data forms and clearly mention the total amount of logs harvested, their average diameter, length, volume in cubic meter, the species, time and place of harvest as well as the Chain of Custody tracking number. The record of production shall serve as the official source to determine the actual volume felled and calculate the cubic meter fee. The Company shall share copies of the tree data forms within one week of receiving a request of the CFMB to do so. The Company hereby also grants permission to the CFMB and NUCFMB to request any production-related data from the FDA, SGS or any other relevant institution;
- g) When the Company provides transportation to the communities during emergency situations the Company will not be responsible for any damage, injury or any other subsequent events that may occur during the provision of this service. Requests for emergency transport can be made by any community member in distress or any CFMB member. The Company can only refuse emergency transport when it would put their staff or property at risk in a disproportionate way. Should such a refusal occur the Company will subsequently provide explanation in a letter to the CFMB.

## **8. DETAILED TERMS FOR CLAUSE 11: PLANNING, MONITORING AND IMPLEMENTATION**

8.1. As provided in clause 11 of the Agreement the Company shall prepare and submit the first version of the strategic forest management plan ahead of the first annual meeting. A final strategic forest management plan shall be submitted ahead of the fourth annual meeting.

- a) The first and final version of the strategic forest management plan shall be based on the Community Forest Management Plan.
- b) The strategic forest management plan shall cover the full term of this Agreement
- c) The first strategic forest management plan shall clearly identify:
  - the areas for commercial use covered by this Agreement as part of the description of the managed forest and its environment
  - off-limit areas including protection, multiple use and agricultural areas
  - the first of five (5) forest compartments for production covering no more than 20% of the total area for commercial activities.
- d) The Company shall allow the community Forest Guard or other persons designated by the CFMB to take part in the multi-resource inventory required for the final strategic forest management plan under 6.3 of Section 2 of the Guidelines for Forest Management Planning.
- e) Copies of the first and final strategic forest management plan shall be submitted to the CFMB thirty (30) days ahead of the first and fourth annual meetings respectively, to allow for inputs from the Community ahead of submission for approval by the FDA.

8.2. As provided in clause 11 of the Agreement the Company shall prepare and submit a first 5-year operational plan ahead of the inception meeting and before



- a) identify five (5) equal annual coupes not exceeding 4% of the total contract area each;
  - b) identify existing and planned main roads including those agreed on in clause 7 of this Agreement
- 8.3. As provided in clause 11 of the Agreement the Company shall prepare and submit the first annual operational plan ahead of the inception meeting and before any logging can take place. Subsequent annual operational plans shall be submitted at least one week ahead of every annual meeting.
- a) The annual operational plan shall cover the annual coupe and shall be based on a pre-felling survey conducted by the Company or a surveyor contracted by the Company. The pre-felling survey will be submitted to the FDA and a copy shall be shared with the CFMB. All annual operational plans shall be drafted in accordance with Section 4 of the Guidelines for Forest Management Planning and shall include information on:
    - the total number and sizes of harvestable species in the area covered by this Agreement;
    - a planning of work including logging activities, secondary roads and bridges, tree planting and environmental protection
    - number of positions to be recruited and staff employed
    - the identification of non-timber forest products, water collection points and cultural norms and practices, such as sacred sites, medicinal plant sites and animal sanctuaries, cemeteries, shrines, sacred forests, special trees and forest collection areas (e.g. for special medicines) within blocks scheduled for harvesting
    - protection areas in accordance with the Code of Forest Harvesting Practices in the blocks scheduled for harvesting including:
      - o soil protection areas
      - o riparian buffer protection areas
      - o ecosystem protection areas
      - o water supply protection areas
      - o plant and protection areas
      - o protected area buffer protection areas
      - o local use areas
      - o cultural site protection areas
- 8.4. Copies of the abovementioned 5-year and annual operational planning documents shall be submitted to the CFMB ahead of the annual meeting of the year in which they are due, to allow community inputs into the planning documents. After the annual meeting, the Company shall submit the updated plans to the FDA for approval. The Company shall send final copies approved by the FDA to the CFMB and NUCFMB. The plans shall in addition be made available by the CFMB and the Company to any person or organisation on request no later than seven (7) days after the request was made. The requesting Party can be asked to cover reasonable costs for reproduction.
- 8.5. If the CFMB and the Company fail to agree on any of the planning documents either Party can initiate the dispute resolution mechanism referenced in clause 15 of the Agreement
- 8.6. The Company shall at all times guarantee access to any area of timber operations to the community Forest Guards. The Company shall provide any documents or information requested by the Forest Guards.



Executive Committee and the Community Assembly no later than one (1) month after the signature of this Agreement. The FDA and the NUCFMB shall attend this inception meeting and external persons and organisations will be allowed to attend as observers.

8.8. As provided in 11.4 of the Agreement, the Company shall convene and finance quarterly and annual meetings to discuss progress of the implementation of the Agreement. The FDA and the NUCFMB shall attend and external persons and organisations will be allowed to attend as observers.

- Quarterly meetings will be held between the Company, the CFMB and Community Executive Committee on the last Friday of each quarter except for those quarters in which an annual meeting is scheduled.
- Annual meetings will be held between the Company, the CFMB, the Community Executive Committee and the Community Assembly no later than the date of the anniversary of the signature of this Agreement.

8.9. Meeting costs are understood to include costs for transportation and food for Community and Company representatives and where needed the costs of attendance for representatives from local authorities and the FDA.

8.10. The Company shall provide the following documents at each of the meetings:

a) Inception meeting:

- Proof of transfer of first payment of land rental fees as provided in 5.1 of the Agreement;
- Proof of transfer of first payment for monitoring and protection as provided in 5.3 of the Agreement;
- The first 5-year operational plan
- The first annual operational plan

b) Quarterly meetings

- Proof of transfer of cubic meter fees as provided in 5.2 of the Agreement;
- Proof of transfer of monitoring and protection payments as provided in 5.3 of the Agreement;
- An up-to-date list signed by the Company of all Community members employed or contracted by the Company as provided in clause 3.3 of this annex;
- Progress reports on road building and infrastructure

c) Annual meetings

- Proof of transfer of land rental fees as provided in 5.1 of the Agreement;
- Proof of payments of cubic meter fees and monitoring and protection payments as provided in 5.2 and 5.3 of the Agreement;
- Proof of transfer of the two semesters' human resource development and training payments as provided in 5.4 of the Agreement;
- An up-to-date list signed by the Company of all Community members employed or contracted by the Company as provided in clause 3.3 of this Annex;



- 8.11. Where needed, the Executive Committee upon instruction of the Community Assembly shall report any changes regarding CFMB membership. The CFMB shall report observations of the community Forest Guards on any violations of forest rules, including pit-sawing activities and concerns related to infrastructure works during the quarterly and annual meetings.
- 8.12. After each meeting the CFMB shall draft a meeting report which shall be shared with the Company, the Community Executive Committee, the FDA and the NUCFMB.
- 8.13. All of the abovementioned meeting documents shall be made available to the any other person or organisation on request no later than 7 days after the request was made.
- 8.14. As part of the annual meetings, Parties to this Agreement shall review performance and compliance. Where the CFMB or Company raise issues of non-performance or non-compliance with this Agreement, this will be reflected in the meeting report. Unless agreed differently, the non-performing and/or non-compliant Party will be given fourteen (14) days to rectify the situation. Where the non-performance or non-compliance is not rectified within this period, operations under this Agreement will be suspended and either Party can initiate the dispute resolution mechanism referenced in clause 15 of the Agreement.

## **9. DETAILED TERMS FOR CLAUSE 12: ASSIGNMENT AND TRANSFER OF CONTRACT**

- 9.1. As provided in clause 12 of the Agreement the Company shall not subcontract timber harvesting operations nor substantial parts of its rights and obligations to any subcontractors or its affiliate company. This means that the Company will at all times remain entirely responsible for the full, timely and correct implementation of this Agreement.
- 9.2. The Company is allowed to subcontract only specific parts of its obligations related to the pre-felling survey or related to building community infrastructure (like building of hand pumps, clinics, schools etc.). Any such subcontracting for the building of community infrastructure is subject to the prior written consent of the CFMB and will not reduce the Company's responsibility for the full implementation of this Agreement. Nevertheless, the community should not unreasonably withhold consent. The Company will be liable for any breach of contract, delay or damage caused by its subcontractor.
- 9.3. The authorisation of the CFMB to transfer this Agreement to a new agreement with a new company shall be in accordance with its constitution and by-laws, and after having duly consulted and been granted authorization by the Community Assembly and Executive Committee of the Community. If the Company transfers its rights under this Agreement to a another Company, this new Company will sign a new Commercial Use Contract with the CFMB in which all rights and duties are transferred as a whole.

## **10. DETAILED TERMS FOR CLAUSE 14: DAMAGES**

- 10.1. Delays in implementing the Agreement are agreed to correspond to the following damages:



- b) Delay in transferring any of the payments mentioned in clause 5 of the Agreement is agreed to correspond in damages of six percent (6%) of the amount owed on a monthly basis;
- c) Delay in road or bridge building mentioned in clause 7.1 is agreed to correspond to damages of US \$500 per week of delay beyond the agreed completion date;
- d) Delay in completing community infrastructure mentioned in clause 7.3 is agreed to correspond to damages of US \$300 per week of delay beyond the agreed completion date;
- e) Delay in compensating damage to subsistence, food or cash crops is agreed to correspond to damages of US \$300 per ten (10) days of delay in paying compensation (counting starts from day operations start/continue after damage has been caused) to be paid directly to the affected farmer.

10.2. Damage caused by continued timber harvesting in spite of timber operations having been suspended are agreed to correspond to US \$1000 per day.

10.3. Where insufficient documentation is available to determine the exact volume of timber harvested in order to calculate the amount of cubic meter fees to be paid by the Company, it is presumed that the Company has harvested 30m<sup>3</sup> per hectare. The number of hectares shall be presumed to be a part of the annual coupe proportionate to the time for which cubic meter fees are claimed.

10.4. Liability for damages assumed by the Company under clause 14.2 of the Agreement shall include liability for environmental, property and any other types of damage as well as criminal and civil liability for any other violations of law.

## **11. DETAILED TERMS FOR CLAUSE 15: ENFORCEMENT OF RULES AND DISPUTE RESOLUTION**

11.1. The Community, through its Community Assembly, shall ensure the necessary By-laws are in place to define the authority of the community Forest Guards, including their authority to instruct any person, including Company staff or contractors, to stop any activities that are prohibited or contrary to the Community Forest Management Plan or forest rules. Similarly, the Company shall ensure that the authority of the community Forest Guards is recognized in its internal rules and policies and is known by all relevant staff and contractors. Prohibited activities shall include pit sawing, illegal hunting, pollution of waterways or land, endangering or damaging forest resources, farming inside the commercial zone, environmental damage, timber harvesting below the minimum diameter.

11.2. In case the Company, community Forest Guards or any other community member detect any of the violations mentioned under 11.1 above, these shall be reported to the CFMB and the Company. Upon receiving such reports, the CFMB shall send the community Forest Guard to instruct the person(s) accused of the violations to stop. The CFMB shall inform local authorities, the nearest office of the FDA and the NUCFMB of the reported violations.

- a) Where any of the violations mentioned under 11.1 above were committed by the Company, its employees or its contractors, the Company shall conduct an internal investigation to resolve the matter amicably first.



useful information and provide support to any interventions by the local authorities and/or the FDA.

- b) Where any violations mentioned under 11.1 were committed by persons or companies not under the control of the CFMB or the Company, either Party may transfer the case to local authorities and the FDA to take forward. The Community Forestry Working Group shall also be notified by the CFMB, which may provide support and/or intervention. The CFMB and the Company will share any useful information and provide support to any interventions by the local authorities and or the FDA.
- c) Where there are reasonable beliefs, presumptions and/or allegations that a member of the CFMB is engaged in any of the violations mentioned under 11.1 above, the community Executive Committee, with the technical support of the FDA, shall conduct an investigation and prepare a comprehensive report. This report shall clearly identify actions to be taken by the CFMB to rectify any problems identified. If not resolved within ninety (90) days of the Executive Committee being informed, the Executive Committee shall ask the FDA to take over the management of the community forest.
- d) Where a violation or the breach of contract is so serious that it results in a breach of trust, either Party can suspend this Agreement with immediate effect by sending a written notice of suspension and initiating the arbitration procedure of this Agreement. Serious violations and breaches of contract are the following:
  - o Violent or abusive behaviour towards Community members/Company employees, whether or not this has resulted in injury
  - o Sexual misconduct by Company staff, including any sexual act or relationship with under-aged or vulnerable members of the Community
  - o Serious damage to Community/Company property or equipment
  - o Serious damage to agricultural land or crops, unauthorized hunting and environmental damage or pollution
  - o Cutting significant numbers of trees below minimum diameter
  - o Under-declaring harvested timber volumes
  - o Harvesting significant numbers of trees outside the contract area
  - o Theft, bribing or any other serious crime

A serious breach shall be deemed to have occurred where any of breaches mentioned above has occurred more than twice, or the person culpable for such breach is a senior management employee of the Company/ member of the CFMB, or that the Company/Community have failed to take punitive action(s) within thirty (30) days from the date the complaint was registered.

11.3. The Parties to this Agreement commit to trying to resolve any dispute through direct consultations and negotiations first:

- a) In case of any disagreement, dispute or failure to comply with any



resolve the issue during this meeting the resolution will be written and signed by the CFMB and the Company at the end of this meeting.

- b) If no resolution is found during the meeting provided for in Clause (a) above, each Party shall prepare a written memorandum or statement of (i) its grievances and (ii) its proposed solution(s) to the disagreement/ dispute. Each Party shall send this memorandum to the NUCFMB no later than 10 calendar days after the meeting.
- c) The NUCFMB shall review the memoranda, consult with Community representatives, the FDA, the Company and thereupon share a written proposed solution with the FDA who will be given seven (7) days to provide inputs and suggestions. After having taken into account the suggestions and inputs from the FDA or after the seven (7) day timeframe has lapsed, the NUCFMB shall circulate the written proposed solution to the Company, FDA and CFMB. The Company and the CFMB shall confirm within seven (7) days whether they agree with the proposed solution. The costs associated with the consultations by the NUCFMB shall be covered by the NUCFMB.
- d) If either Party does not implement the agreement reached at the meeting or does not agree or implement the solution proposed formally in writing by the NUCFMB, logging operations under this Agreement shall be suspended and either Party can submit the case to arbitration.

11.4. The Parties agree to submit disputes arising out of this Agreement which cannot be solved amicably to arbitration:

- a) A Party requesting arbitration shall give notice to the other Party in writing, setting out the material particulars of the dispute, annexing any relevant documentation and requesting arbitration. The other Party shall reply to the request for arbitration within ten (10) days of receipt and respond to the material particulars alleged in the requesting Party's notice.
- b) Each Party shall appoint one Arbitrator no later than ten (10) calendar days after the notice. The Managing Director of the FDA or his/her designated representative shall be the Chairperson of the panel. Arbitrators are not expected to represent the Party that has appointed them, rather they shall be neutral and apply the provisions of this Agreement and the relevant laws when assessing the issues presented to them.
- c) The arbitral panel shall review the documents submitted to them and shall hear both Parties. The arbitral panel can request that either Party provide additional information, can hear witnesses, experts and any other resource person deemed useful. The arbitral panel shall decide by majority of at least two of the arbitrators. Decisions of the arbitral panel shall be in writing, signed and shall provide explanation for decision reached. The decision shall be binding and enforceable.
- d) Decisions by the arbitral panel shall be reached within two (2) months of the date of the written notice initiating the arbitration process, unless the arbitral panel decides to prolong this delay, such decision to extend the delay shall be taken by consensus;
- e) Each P shall be responsible for and shall pay the fees and expenses of its appointed / designated arbitrator. Where needed, the fees and expenses of the third arbitrator shall be shared on an equal basis by the Parties. The costs and expenses of the proceedings itself shall be paid as directed in the decision of the arbitral panel.

11.5. Any party can appeal the decision of the arbitral panel in the appropriate court.



compromise or resolution by private persons. Therefore, where the dispute between Parties is of a criminal nature the case will be submitted to the relevant government law enforcement agency.

## **12. DETAILED TERMS FOR CLAUSE 16: TERMINATION**

### **12.1. Upon termination of the Agreement**

- a) any rights of the Parties which may have accrued before the end date shall not be affected
- b) any future rights to the Community Forest for the Company will be relinquished
- c) the CFMB will have the right to engage other interested Party(ies) for the harvest of the Community Forest.

12.2. Upon termination by either Party, any rights of the Parties which may have accrued before the end date shall not be affected and each Party shall have the right to seek enforcement of or compensation for their rights. The Parties agree that termination of this Agreement shall not affect any rights that may have accrued to the Parties and which is not in dispute prior to the termination and a Party to whom any right had accrued prior to termination may seek specific performance of the obligations or other legal remedies in the appropriate court of Liberia.

12.3. Should the Company be the Defaulting Party, and the Agreement is terminated because the Company fails to cure the defect, the Company relinquishes any right to the Community Forest, and authorizes the Community to proceed and engage other interested Party(ies) for the harvest of the Community Forest.

## **13. DETAILED TERMS FOR CLAUSE 17: FORCE MAJEURE:**

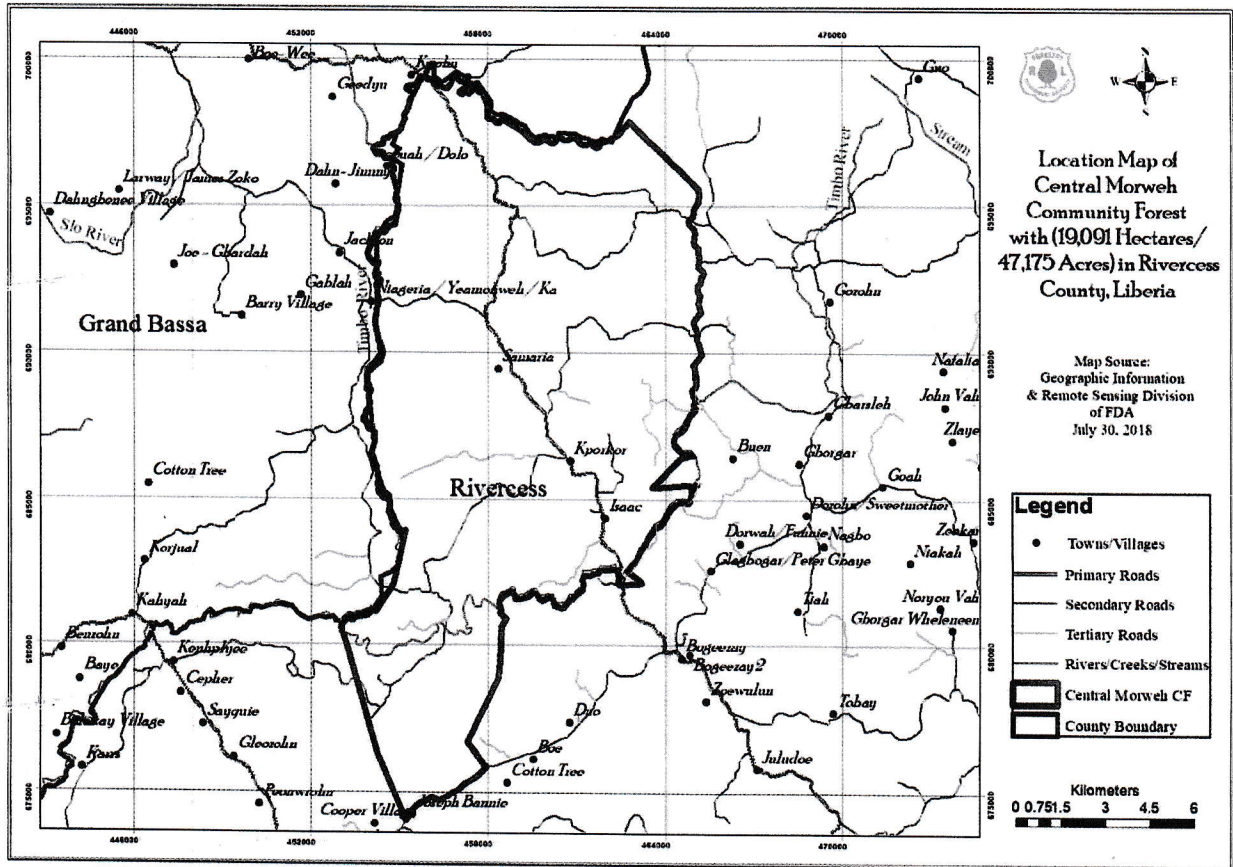
It is agreed that this Agreement may be suspended in the event of Force Majeure or supervening impossibility, either due to acts of God such as flood, fire from lightening or other natural causes, earthquake, volcano, landslide, epidemic such as Ebola Virus Disease, and any such natural cause, or acts of man such as military coup, armed civil conflict affecting the operational area, nationwide workers strike, terrorist war, or war between Liberia and another state, which makes it practically impossible to perform the obligations of this Agreement. However, the Company shall make payment for the logs already harvested and intentionally abandoned. Upon the cessation of the force majeure event, the performance of this Agreement shall resume, and the period of suspension shall be added to the remaining period of the Agreement.

## **14. DETAILED TERMS FOR CLAUSE 21: WAIVER:**

The failure of either Party to insist upon a strict performance of any of the terms, covenants and conditions herein, or the waiver by either Party of any breach of any provision of this Agreement, shall not be deemed a waiver of any rights or remedies of either Party and shall not be deemed a waiver of any other breach of any terms, conditions, covenants and provision or any similar or other provision or condition of this Agreement.



# ANNEX B: CUC CONTRACT AREA MAP





## ANNEX C: CALCULATION FORMULA M<sup>3</sup>/LOG

Included below is the formula that will be used to calculate the amount of cubic meters for each log harvested in accordance with clause 5.2 of the Agreement and the detailed terms to that clause included in annex A .

$$V = \frac{D^2 \times L \times \pi}{4}$$

- V = volume expressed in m<sup>3</sup>
- D = Average diameter calculated by taking two measurements of diameter at each of the ends of the log. The sum of those four measurements is divided by four to calculate the average diameter.
- L = The length is the shortest distance between the two ends of the log, measured without passing over any defects in the log that could influence the total distance