AN AGREEMENT BETWEEN

School of Forest Resources and Environmental Science, Michigan Technological University
1400 Townsend Drive, Houghton, MI 49931,

SELLER

and

_____________________________________________________________________

_____________________________________________________________________

BUYER

made on ___________________________________________________________, __________

For the sale of timber on the area known as the _________________________________________________________

_______________________________________________________________________________________________________________________________________

County, Michigan.

The Seller, having the legal right to sell, agrees to sell to the Buyer, who agrees to buy all timber that has been marked or otherwise designated for harvesting by the Seller on the lands described above. The area of the sale is further described on the map(s) or diagram(s) attached to and made a part of this Contract.

FOR AND IN CONSIDERATION of the following terms and conditions mutually agreed upon by the Seller and Buyer:

CONTRACT PERIOD AND TERMINATION

1. As time is of the essence, the Buyer shall cut all timber or forest products designated for harvest and complete all other performance described herein so that performance is completed no later than the date shown in the Request for Bids. If this condition is not met, Buyer shall immediately cease all operations and make payment for all timber cut, unless written permission is granted to the Buyer by the Seller. The period of this contract commences upon its signing by both parties and the Buyer providing the Seller with all required bonds and certificates of insurance.

2. The Seller or Agent shall notify the Buyer in the event of a breach of any condition of the Contract at which time all operations shall cease immediately upon such notification. Continued occupancy on the premises shall be a trespass. Following such notification, operations shall be halted and not resumed nor timber be cut or removed without written authorization from the Seller.

3. In the event of a dispute regarding the terms of this Contract, final decision shall rest with a reputable person to be mutually agreed upon by the parties to this Contract. In the case of further disagreement, an arbitration board of three persons, one to be selected by each party to this Contract, and the third to be selected by the first two members of said board will render a final decision. All costs of arbitration shall be shared equally by the Buyer and Seller.

4. (a) The Buyer shall post a performance bond with the Seller’s Agent, _______________________________________________________

in the amount of $10000 (ten thousand dollars) or fifty (50) percent of the total bid price, whichever is greater, prior to commencing harvesting operations in order to assure proper performance and to be held by the Seller’s Agent until all conditions of the Contract are completed to the satisfaction of the Seller.

(b) Upon breach of any condition of this Contract, the performance bond shall be applied to actual damages incurred by the Seller, or said bond will be forfeited as liquidated damages at the Seller’s election.

(c) In addition to exercising rights under this clause, the Seller may also seek actual damages exceeding the amount of the performance bond as well as any other remedies under law or this Contract.

5. The Seller may suspend operations, including the removal of cut timber, if the conditions of the Contract are violated. Violations of any conditions of the Contract are sufficient grounds for termination.
6. The Buyer shall notify the Seller of the commencement of harvesting operations 3 days in advance. All harvesting will be coordinated through the Ford Forestry Center, School of Forest Resources and Environmental Sciences, including starting and ending dates, which are weather-dependent.

7. All timber designated for cutting, or products included in this Contract shall remain the property of the Seller until paid for in full by the Buyer.

8. Operations can occur at any time during the period of this Contract unless otherwise restricted by terms and conditions stated in the Request for Bids or another amendment to this Contract.

9. The effectual cutting license granted as a result of this contract is not assignable or transferable, in whole or in part, without prior written consent of the Seller.

PRODUCTS TO BE REMOVED

10. The Seller authorizes the Buyer and Buyer’s employees to enter the premises with the necessary equipment and vehicles to cut, remove, and pay for the timber or forest products designated for harvest in the Request for bids.

11. Any trees not designated for cutting shall not be cut without prior written approval of the Seller. For any unmarked trees cut with the Seller’s permission, the Buyer agrees to pay the prices listed herein. For unmarked trees which are cut without the Seller’s permission, the Buyer agrees to pay three (3) times the prices listed herein. The unmarked, severed tree becomes the property of the Buyer upon payment of the appropriate compensation to the Seller, as described herein.

12. Trees to be harvested in the selection areas are marked in orange paint. Possession of orange paint by the Buyer on the sale premises is prohibited. Trees in the clearcut areas are surrounded by either blue paint (property boundary) or red paint (compartment boundary) or a combination of the two. All trees marked with green paint are leave trees.

13. Trees specially marked with yellow and orange paint are to be cut stringer length to a ten inch top diameter, and decked roadside to be retained for use by Seller.

PAYMENTS

14. Payment shall be in accordance with the terms and conditions shown in the Request for Bids, and Bid Form, and as otherwise described herein.

15. The Buyer agrees to pay for said timber according to the method and time of payment shown in the Request for Bids, and as otherwise described herein.

16. All forest products sold by unit scale or piece count shall be scaled, measured, or counted in the presence of the Seller and the Buyer, or their authorized agents and appropriate scale tickets provided to the Seller.

17. All sawtimber sold by the unit is to be scaled by the Scribner log rule. Measurements shall be made at the small end of the log along the average diameter inside bark to the nearest inch.

18. Cord means a standard measure of piled wood 4 feet x 4 feet x 96 to 100 inches. Cord products of other dimensions shall be converted to standard cords. Cordwood sold by weight, or other solid wood products (poles, cabin logs) shall be converted to cords on the basis used by the purchaser, or as otherwise agreed upon between the Buyer and Seller.

UTILIZATION

19. The Buyer agrees to cut and remove all merchantable products designated for harvest, making every effort to secure the highest value and utilization of said products including topwood and pulpwood trees five (5) inches and larger where economically feasible. Scaling and grading will be done in accordance with the Timber Producers Association of Michigan and Wisconsin, Inc. Official Grading Rules for Northern Hardwood and Softwood Logs and Tie Cuts, as amended from time to time. Stumps shall be cut so as to cause the least waste and as close to the root swell or the high side of the ground as possible, which normally does not exceed 18 inches in height for trees 12 inches DBH or larger and 10 inches in height for trees less than 12 inches DBH.

20. Ordinary and reasonable care shall be used in felling and utilizing the trees unless further restricted by terms and conditions shown in the Request for Bids or another amendment to this Contract.

21. The Buyer agrees to complete all operations described herein without waste or nuisance on the premises.

RESIDUAL DAMAGE

22. Timber or forest growth, whether or not mature, may not be damaged through careless operations or unnecessary equipment use. Equipment or logging methods that cause undue damage may be prohibited by the forester in charge.
23. Damage to residual trees six (6) inches or larger is defined as wounds on the bole penetrating through the bark in excess of ¼ circumference or twenty-five (25) square inches and/or the breakage of 25% or more of the main branches in the crown. Damage to 15% of residual trees per acre will be considered excessive and shall result in suspension of harvesting operations.

24. Rutting is defined as depressions into the forest floor and upper soil layers exceeding ten (10) inches in depth. Excessive rutting will be considered unacceptable and shall result in suspension of harvesting operations until conditions improve.

SLASH AND DEBRIS DISPOSAL

25. Slash disposal requirements are that any tops or slash within fifty (50) feet of existing roads and skid trails shall be cut so that it is within three (3) feet above the forest floor. No trees may be left hanging in other trees and no tops or slash may be left on existing roads.

26. The Buyer shall remove from the premises, to the satisfaction of the Seller, all solid waste, trash, and debris generated by the Buyer.

THEFT AND FIRE

27. The theft of cut trees or logs from the premises shall be the responsibility of the Buyer, and compensation for the theft of any cut trees or logs will be paid to the Seller according to the conditions set forth in this Contract and the Request for Bids.

28. In the event of fire on the premises, whether natural or artificial, losses of cut trees or logs shall be the responsibility of the Buyer, and losses of standing trees whether marked or unmarked shall be the responsibility of the Seller unless the fire is caused by the negligence or willful conduct of Buyer in which event Buyer shall be responsible for all fire damage.

RESPONSIBLE PRACTICES

29. The Contractor will conduct his operation in accordance with good logging practices and follow the recommended Best Management Practices for Water Quality as published by the Michigan Dept. of Environmental Quality.

30. The contractor must be a current participant in the Sustainable Forestry Education (SFE) program and have completed the required initial core of courses for SFE certification.

COMPLIANCE WITH LAWS

31. This Contract shall be governed by the laws of the State of Michigan, and the Buyer agrees to abide by all applicable safety standards published by the Michigan Dept. of Consumer & Industry Services, Bureau of Safety and Regulation (MIOSHA), and the Michigan Dept. of Health.

32. The Buyer shall comply with all federal, state, and local laws, rules, and regulations now and hereafter placed in effect, affecting his operations hereunder, including but not limited to the Fair Labor Standards Act (also known as the Wage and Hour Law), Social Security Act, Internal Revenue Act and withholding tax laws and Michigan Unemployment Compensation Law, and any amendments and supplements thereto and rules, regulations and orders issued thereafter.

ROADS, CAMPS, SURVEY CORNERS, SPECIAL FEATURES

33. Location, construction, and use of all logging roads, mill sites, and camp sites must be approved in advance by the Seller. All such areas or facilities used or constructed by the Buyer must be operated, maintained, and restored prior to termination of the Contract in a manner that is satisfactory to the Seller.

34. The Buyer shall repair all damage to existing roads, and prior to termination of the Contract, restore all roads used to a condition satisfactory to the Seller and at least equal to the condition existing on the first day that the Buyer commenced use of any road hereunder. The Buyer shall be solely responsible for the daily maintenance and control of any road used by the Buyer including grading, placement of appropriate rock, gravel, or other stabilization material and the maintenance of all roads in a condition equal to that on the day of commencement of use. If required for safety purposes, the Buyer will notify the Seller and request authority to close any such roads to public traffic during the period of the Buyer's activities on the property. The Buyer shall be solely responsible, during the period of the Contract, for properly securing, locking, or otherwise safely preventing public access on any roadway requiring such closure or control. The Seller reserves the right, if weather conditions necessitate the cessation of logging activities to control unnecessary damage to roadways, skidways, or the forest surface, to suspend operations for such times as are necessary with no liability to the Buyer.

35. The Buyer agrees to pay for the cost of repair or replacement of property or any land survey monuments or accessories which are removed or destroyed or made inaccessible.

36. The Buyer shall not damage or disturb existing special features, designated by the Seller, which are designated in pink ribbon and may include streams, wetlands, structures etc. Any damage incurred to these facilities as a result of the Buyer’s activities shall be repaired or compensated by the Buyer in a manner that is satisfactory to the Seller.
37. The Buyer is solely responsible for any damage to existing infrastructure occurring as a result of the Buyer’s activities or operations, including but not limited to aboveground electrical and telecommunications lines and poles, buried water lines, drain fields, or cables.

LIABILITY AND INSURANCE

38. The Buyer agrees to protect, indemnify, and hold harmless the Seller from and against all causes of action, claims, demands, suits, liability, or expenses, including attorney fees and costs of defense, arising out of loss or damage to property, bodily injury, or death to any person as a direct or indirect result of Buyer’s activities or operations arising out of or in connection with this Contract.

39. The Buyer shall at its sole expense obtain and maintain in force during the period of this Contract and, if on a claims made basis for at least three years following the termination date of this Contract, the following insurance coverage:

A. Workers’ Disability Compensation Insurance as required by the Michigan Workers’ Compensation Act, as amended, including coverage B-employer liability coverage for all employees. All subcontractors of the Buyer shall also maintain all insurance coverage required hereby and the Buyer shall provide the required proof of coverage to the Seller for all subcontractors.

B. Comprehensive General Liability Insurance insuring against claims for bodily injury or death with a minimum policy limit of $250,000 per person and $500,000 aggregate and property damage coverage in a minimum policy amount of $50,000. The Seller shall be named as an additional insured, by endorsement, on the Buyer’s comprehensive general liability coverage solely with respect to any injury or death arising out of or in connection with the Buyer’s activities pursuant to or in furtherance of this Contract.

C. No-fault automobile insurance coverage as required by Michigan law (including underinsured motorist coverage) in a policy amount not less than $200,000 per person.

40. Prior to commencement of any activity pursuant to this Contract, The Buyer agrees to provide to the Seller certificates of insurance showing the above required coverage to be in full force and confirming that the Seller will be provided thirty days advance notice by the insurance carrier(s) of any proposed termination of coverage. The Buyer shall also provide the endorsement naming the Seller as additional insured on the General Liability coverage as required above.

GENERAL

41. The Buyer is an independent contractor for all purposes including Worker’s Compensation and is not an employee or an agent of the Seller. The Seller agrees that the undersigned Buyer, except as otherwise specifically provided herein, shall have sole control of the method, hours worked, time and manner of any timber cutting to be performed hereunder. The Seller reserves the right only to inspect the job site for the sole purpose of insuring that cutting is progressing in compliance with the cutting practices established under this Contract. The Seller assumes no responsibility for the supervision or direction of the performance of any of the harvesting to be performed by the undersigned Buyer or of its employees. The Seller further agrees that it will exercise no control over the selection and/or dismissal of the Buyer’s employees. Buyer represents that it is regularly engaged in the business of harvesting and transporting forest products and that it has the required equipment, experience, and manpower to safely and timely perform the harvesting and the removal of the timber purchased under this contract in a good, safe, and workmanlike manner.

42. The Seller agrees to initially designate the timber to be cut and sold and to make inspections for the purpose of ascertaining whether the timber has in fact been cut and the Contract complied with. All work will be performed in accordance with good logging practices in the region in which logging is being conducted. The parties stipulate that in fulfillment of the terms of this Contract, the Seller warrants that he has clear and unencumbered title to this stumpage as the subject of this Contract.

43. This Contract, or work under it may not be assigned or subcontracted in part or in whole without prior written approval from the Seller, and may be changed or amended only in writing by the Seller. The Seller shall notify the surety, if any, of such change or amendment deemed necessary.

44. The Buyer, in the event that any uncertainty exists regarding the location of the Seller’s boundary lines or property lines will contact the Seller and the Seller will provide the necessary marking or clarification. The Buyer will be solely responsible for any trespass by the Buyer or its employees or contractors upon any adjoining property not owned by the Seller, and agrees to indemnify and hold harmless the Seller from and against any and all claims for damages arising out of The Buyer’s trespass, whether intentional or unknowing, on adjoining properties or to timber not owned by the Seller.

45. This Contract, together with specifications in the request for bids as well as reference to parts and attachments shall constitute the entire agreement and any previous communications or agreements to this Contract are hereby superceded. Any and all amendments to this Contract shall be in writing signed by both parties.
IN WITNESS THEREOF,

Buyer: ____________________________ Signature: ____________________________ Date: __________

Seller: ____________________________ Signature: ____________________________ Date: __________

Witness: ____________________________ Signature: ____________________________ Date: __________