

**MANAGEMENT AND DEVELOPMENT OF TEAK  
PLANTATION AGREEMENT, 2006**

**BETWEEN**

**THE GOVERNMENT OF WESTERN EQUATORIA  
STATE**

**(MINISTRY OF AGRICULTURE, ENVIRONMENT  
AND RURAL DEVELOPMENT)**

*(AS PRINCIPAL PARTNER)*

**AND**

**THE GOVERNMENT OF SOUTHERN SUDAN  
(MINISTRY OF AGRICULTURE AND FORESTRY)**

*ON ONE PARTY*

**AND**

**EQUATORIA TEAK COMPANY LIMITED  
WESTERN EQUATORIA STATE, YAMBIO**

*ON THE OTHER*

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**1. CONCESSION AGREEMENT IS**

**Between**

**THE GOVERNMENT OF WESTERN EQUATORIA STATE, MINISTRY OF AGRICULTURE, ENVIRONMENT AND RURAL DEVELOPMENT  
(AS PRINCIPAL PARTNER)**

**AND**

**THE GOVERNMENT OF SOUTHERN SUDAN (MINISTRY OF AGRICULTURE AND FORESTRY),** represented by the Minister hereinafter referred to as “the Government” ;  
**all jointly of the one part,**

**AND**

**EQUATORIA TEAK COMPANY LIMITED** of Western Equatoria State Yambio, the Company duly organized and incorporated in accordance with laws of NEW SUDAN. The Company is represented by CDC duly authorized by the Company with authorization hereinafter referred to as “the Concessionaire” of the other part,

Whereas;

- a. This agreement promotes the development of a forest sector in South Sudan on a sustainable basis for the benefit of present and future generations of South Sudan.
- b. The agreement envisages the involvement of stakeholders, including the private sector and communities, in the sustainable management of forest resources, and the maximisation and equitable sharing of economic returns generated from the management of these natural resources.
- c. That all the concessions will be managed in accordance and compliance to the laws of South Sudan.
- d. That the concessionaire expresses willingness to exercise the grant of the concession in accordance with the terms and conditions agreed.

- e. The Minister has accepted to grant the concession on the terms and conditions hereinafter.

Therefore, in consideration of the undertakings, covenants and conditions set forth herein, the parties agree as follows:

### 1.1 Definitions

In this agreement, the following words and expressions shall have the meaning as defined assigned to them;

- "Agreement" means this agreement, including the schedules attached hereto and any amendments thereto made in accordance with the provisions of this Agreement.
- New Sudan Government Means Southern Sudan  
Means Government of Western Equatoria State
- "Act" means New Sudan Timber Utilization and Management Act, 2003, and any subsidiary Legislation made there under, including the Forest Regulations.
- "Applicable Laws" means all laws Southern Sudan relating to land use, environmental protection, forest resources, water resources and trade licensing, promulgated or brought into force and effect by the Government, including regulations and rules made there under, and judgments, decrees, injunctions, writs and orders of any Court of record, as may be in force and effect during the subsistence of this Agreement.
- "Applicable permits" means all clearances, permits, authorisations, consents and approvals under or pursuant to Applicable Laws required to be obtained and maintained by the Concessionaire in order to manage and develop the Plantation in accordance with Good Industry Practice.
- "Biodiversity" means the diversity of plants, animals and other living organisms in all their forms and levels of organisation, including genes, species, ecosystems and the evolutionary and functional processes which link them.
- "Change in Law" means the occurrence of any of the following after the date of this Agreement:
- a) The enactment of any new law in South Sudan having a material impact on the management and development of the Plantation;
  - b) The repeal, modification or re-enactment of any existing Applicable Laws;
  - c) The commencement of any law which has not entered into force on the date of this Agreement, the application of which

would have a material impact on the management and development of the Plantation;

- d) A change in the interpretation or application of any law by a court of law as compared with the interpretation or application by a court of law prior to the date of this Agreement which change would have material effect on the management and development of the Plantation;
- e) Any material change in the rates of taxes chargeable by the Government of Southern Sudan (GOSS) under this Agreement.

"Commencement Date"	means the date on which the Government delivers physical possession of the Plantation to the Concessionaire.
"Concession"	means the long-term agreement between the Government and the concessionaire, entrusting the latter to manage the Plantation in accordance with a pre-approved Forest Management Plan and the terms and conditions of this Agreement.
"Contractor"	means any person with whom the Concessionaire has entered into or may enter into any contract or agreement for the execution of the Concessionaire's obligations under his Agreement.
"Cure Period"	means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the party responsible for such breach or default.
"Designated Areas"	means the areas lying within the Plantation over which the Government has permitted and may, with prior consultations with the Concessionaire, permit rights of user to Designated Organisations.
"Designated Organisations"	means organisations or institutions permitted by the Government to undertake special activities such as research and monitoring operations.
"Dispute"	means any disagreement, difference of whatever nature however arising under, out of or in relation to this Agreement including issues of performance of the parties' obligations hereunder, between the parties and so notified by either party to the other.
"Dispute Resolution Procedure"	means the procedure for resolution of disputes.
"Encumbrance"	means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include, without any limitation, any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Plantation,

physical encumbrances and encroachments on the Plantation.

**"Environmental Impact Assessment" or "EIA"** means the process by which the environmental and social impacts of development activities are identified, assessed, managed and monitored.

**"Force Majeure Event"** means an occurrence which renders it impossible or impractical for the party claiming Force Majeure from performing its obligations under this Agreement because of any prevention, delay or stoppage, caused by strikes, lockouts, labour disputes, acts of God, inability to obtain services, labour, utilities, supplies or material or reasonable substitutes for those items, administrative or court proceedings, Governments actions, civil commotions, fire, earthquake, war, weather or other casualty or other causes or circumstances beyond the reasonable control of the Party obligated to perform.

**"Forest Management Plan"** means the plan comprising details for the management and development of the Plantation, proforma set in Annex "D" of this Agreement.

**"Forest Regulations"** means the rules and regulations cited as the Forest Regulations under the Act.

**"Forest Stewardship Council" and "FSC"** means the international network, which sets international standards for responsible forest management.

**"Good Industry Practice"** means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and personally expected of and accepted internationally from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and acting generally in accordance with the Act, and FSC standards, and would mean good sustainable forest management practices which would be expected to result in the performance of its obligations by the Concessionaire and in the management of the Plantation in accordance with this Agreement, Applicable Laws, Applicable Permits, requirements of FSC and ISO certifications, reliability, safety, environmental awareness, silviculture and sustainable development.

**"International Standards Organisation" and "ISO"** means the internationally recognised specification standards and refers to the institution which registers organisations which conform to its requirements for management practices with special reference to environmental management.

**"Management and Development" and "manage and develop"** means and refers to the whole process of management and development of the Plantation, applying Good Industry Practice with regard to nursery development, planting, silviculture, harvesting, saw-milling, replanting, protection management, marketing of

forest products, maintenance of infrastructure and plantation assets, environmental protection and all other aspects relating to sustainable development of the Plantation.

**"Material Adverse Effect"** means material adverse effect on:

- (a) the ability of the Concessionaire to observe and perform any of its rights and obligations under and in accordance with the provisions of this Agreement and / or
- (b) the legality, validity, binding effect or enforceability of this Agreement.

**"Material Breach"** means a breach by either Party of any of its obligations under this Agreement which has, or is likely to have, a Material Adverse Effect on the management and development of the Plantation of which such Party shall have failed to remedy within the Cure Period.

**"Minister"** means the Minister responsible for Natural Resources or as defined in the Act.

**"Parties"** means the parties to this Agreement collectively and "Party" shall mean either of the parties to this Agreement individually.

**"Physical possession"** means, in relation to the Plantation, the occupancy and material control of the Plantation subject to Third Party Rights, Village Communities Rights and rights over Designated Areas;

**"Plantation"** means *(describe the area covered by the concession and assets thereon in sufficient detail; a cartographic map of the area should form an Annex to the Agreement for the sake of clarity; where the area is comprised in a Forest Reserve the Gazettement Notice should be cited).*

**"Rotation"** means the system of successive harvesting of forest products from pre-determined blocks and replanting the same, as specified in the Forest Management Plan, in order to ensure sustainability of the Plantation.

**"Termination"** means termination of this Agreement and the Concession hereunder pursuant to a Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include the expiry of this Agreement and/or the Concession due to expiry of the Concession Period in the normal course.

**"Termination Date"** means the date on which the Termination occurs which shall be the date on which the Termination Notice has been delivered or deemed to have been delivered by a Party issuing the same to the other Party in accordance with the provision of this Agreement.



- "Termination Notice"** means a communication in writing by a Party to the other Party regarding Termination in accordance with the applicable provisions of this Agreement.
- "Third Party Rights"** means the rights of persons, other than the Parties to have access to the Plantation for purposes of conducting research, installation of power lines and telecommunication facilities, construction and maintenance of public roads, bridges, embankments, water supply systems, drainage works, milestones, sign boards and other similar purposes in the Plantation.
- "Village Communities"** mean the communities residing in the villages adjacent to the Plantation.
- "Village Communities Rights"** means the rights of Village Communities living near or adjacent to the Plantation to regular consultations and, with prior agreement with the Concessionaire, access to the Plantation for the purpose of gathering non-timber forest products available in the Plantation.

## **1.2 Interpretation**

### **1.2.1 In this Agreement, unless the context otherwise requires:**

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to the law of South Sudan shall include the laws, acts, ordinances, rules, regulations, guidelines or by-laws, which have the force of law in South Sudan;
- (c) the words importing singular shall include plural and vice versa where the context so requires, and words denoting natural persons shall include partnerships, firms, companies, corporations, trusts, associations, organisations and other entities (whether or not having a separate legal entity);
- (d) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) terms and words beginning with capital letters and defined in this Agreement have the same meaning in the Annexes.
- (f) the words "include" and "including" are to be construed without limitation;
- (g) the Annexes to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (h) any reference at any time to any agreement, deed, instrument, license or document of any description shall be constructed as reference to that agreement, deed, instrument, license or other document as amended,

varied, supplemented, modified or suspended at the time of such reference;

- (i) references to recitals, Sections, sub-Sections, clauses, or annexes in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Sections, sub-Sections, clauses and schedules of or to this Agreement;
- (j) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative(s) of such Party in its behalf and not otherwise;
- (k) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; and
- (l) the damages payable by either Party to the other as set forth in this Agreement, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages.

#### **1.2.2 Measurements and Arithmetic conversions**

All measurements and calculations shall be in the metric system and calculations done to three decimal places, with digit five (5) or above being rounded up and below (5) being rounded down except in the calculation of fees which shall be rounded off to the nearest currency unit example one United States Dollar (US\$).

#### **1.2.3 In case of ambiguities or discrepancies within this Agreement, the following rules shall apply:**

- (i) between two Sections of this Agreement, the provisions of the specific Sections relevant to the issue under consideration shall prevail over those in other Sections;
- (ii) between the Sections and the Annexes the Sections shall prevail;
- (iii) between any value written in numerals and that in words, the latter shall apply.

## **2. CONCESSION OF PLANTATION AREA**

### **2.1 Grant of Concession**

- (i) Subject to all rights and privileges retained by the Government pursuant to the provisions of the Act and in accordance with the terms and conditions set forth in this Agreement, the Government hereby grants and authorises the Concessionaire to enter into, manage and develop the Plantation and to exercise and or enjoy the rights, powers, privileges, authorisations and entitlements as set forth in this Agreement including but not limited to the right to harvest and trade and generally deal in the forest products comprised in the Plantation.

- (ii) The concession hereby granted is subject to the Village Communities Rights, the Third Party Rights, the rights reserved by the Government in respect of Designated Areas and the rights of the Government, its officers and agents to enter the Plantation from time to time to make inspection concerning the management and maintenance of the Plantation and its assets and generally to monitor performance by the Concessionaire of the Concessionaire's obligations hereunder.

**2.2 Description of Plantation and Concession Option**

The Plantation is comprised of the Forest Reserves in the and including the following estimated forest areas;

1. Yabua forest reserve	2,083
2. Nangodi forest reserve	2,513
3. Mbarizanga forest reserve	3,750
4. Magaba forest reserve	3,825
5. Ringasi forest reserve	6,469

**Total area** **18640 hectares**

The boundaries of the Plantation are demarcated in the map attached hereto as Annexure "A".

**2.3 Concession Period**

The Concession hereby granted is for a period of 32 years ( equivalent to one full rotation) with an option to extend for a second full rotation commencing on the Commencement Date during which the Concessionaire is authorised to manage and develop the Plantation in accordance with the provisions hereof; provided that;

- (a) In the event of the concession being extended by the Government beyond the Concession Period in accordance with the provisions of this Agreement, the Concession Period shall include the aggregate period by which the concession is so extended; and
- (b) In the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Commencement Date and ending with the Termination.
- (c) Annual review of the standard set in the forestry management plan.

**2.4 Acceptance of the Concession**

The Concessionaire hereby accepts the Concession and agrees and undertakes to manage and develop the Plantation and to perform all the Concessionaire's obligations in accordance with the terms and conditions set forth in this Agreement.

**2.4.1** The Concessionaire understands and agrees that this Agreement and grant is by license and not lease, confers only permission to occupy and use the Plantation in accordance with the terms and conditions hereinafter specified without granting or reserving to the Concessionaire any interest or estate therein; the expenditure of capital and or labour in the course of use and occupancy hereunder shall not confer any interest or estate in the Plantation by virtue of the said use, occupancy and or expenditure of monies thereon; and it is the intention of the Parties to limit the right of use granted herein to the use of the concessionaire, revocable on the terms of this agreement and non-assignable privilege of use of the premises for the concession granted herein.

**2.4.2** The Concessionaire hereby acknowledges the title of the *Government* in and to the Plantation, the improvements existing thereon and the Biodiversity on the Commencement Date and covenants and agrees never to assail, contest and or resist the said title or do anything that could negatively impact on the Biodiversity.

**2.5 Handover of the Plantation**

(a) The Government hereby undertakes to handover to the Concessionaire physical possession of the Plantation free from Encumbrances on the Commencement Date together with all the improvements thereon for the purposes of management and development thereof. The Concessionaire shall, on the Commencement Date, be deemed to have acknowledged personal inspection of the Plantation and evaluation of the forest products thereon and shall thereafter be disqualified from making any demands upon the Government for any deficiencies whatsoever. Improvements and assets forming part of this plantation lease are noted in Annexure B.

(b) The Government hereby confirms that upon the Plantation being handed over pursuant to the preceding sub-Section (a) the Concessionaire shall have the exclusive right to enter upon, occupy and use the Plantation and make, at its costs, charges and expenses, such developments and improvements in the Plantation for the better management and development of the Plantation, subject to and in accordance with the provisions of this Agreement.

(c) The Government of West Equatoria State requires surety for the development of the project for the concessionaire for an amount of United State Dollars (US\$) 300,000. This surety will be repaid to the concessionaire when the concessionaire has invested an amount of US\$ 2,000,000 into the Yambio County Project. The surety will be transferred to an appropriate government account within 45 days from the date of signing this agreement.

**2.5 Use of the Plantation**

The Plantation shall be used only and exclusively for purposes authorised in the management plan, and such other purposes as are incidental to the management and development of the Plantation provided express approval therefore is granted by the Minister, and for no other purposes whatsoever. For the purposes of harvesting the mature trees standing on the concession area on the Commencement Date, the Plantation shall be divided into several compartments of harvesting and replanting blocks to the end that the Plantation shall be managed and developed in a sustainable manner which shall ensure precise harvesting rotation. The Concessionaire further agrees not to change the species of trees and

- (a) It is duly organised, validly existing and in good standing under the laws of Southern Sudan.
- (b) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) It has taken all necessary corporate and other actions under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- (d) It has the financial and professional standing and capacity to discharge its obligations as specified in this Agreement;
- (e) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) It is subject to civil and commercial laws of Southern Sudan with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (g) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's *Memorandum and Sections of Association*, any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) There are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which, individually or in the aggregate, may result in any Material Adverse Effect;
- (i) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any authority having jurisdiction over the Concessionaire which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;
- (j) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (k) No representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Government or to any governmental authority in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (l) No sums in cash or kind have been paid, by or on behalf of the Concessionaire, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Government in connection therewith.

### **3.2 Disclaimer**

**3.2.1** Without prejudice to any express provision in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful inspection of the Plantation, made an independent evaluation of the volumes of forest products and all the features of the Plantation and all the information provided by the Government, and has determined to the Concessionaire's satisfaction the nature and extent of such products, features, risks and other hazards as are likely to arise or may be faced by the Concessionaire in the course of management and development of the Plantation and performance of its obligations hereunder.

**3.2.2** The Concessionaire further acknowledges and hereby accepts the risk of inadequacy, mistakes or error in or relating to any of the matters set forth in sub section 3.2.1 above and hereby confirms that the Government shall not be liable for the same in any manner whatsoever to the Concessionaire.

### **3.3 Representations and warranties of the Government**

The Government represents and warrants to the Concessionaire that:

- (a) The Government has full power and authority to grant the concession;
- (b) The Government has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes its legal and binding obligation enforceable against it in accordance with the terms hereof.

## **4. CONDITIONS PRECEDENT TO ENTRY INTO FORCE**

### **Conditions Precedent to effectiveness of Agreement**

The entry into force of this Agreement shall consider the following conditions:

- (i) The Concessionaire shall have prepared or partially prepared inclusive of a completion schedule of less than 1 year and delivered to the Government a detailed Forest Management Plan acceptable to the Government following a proforma table of contents set out in Annexure D.
- (ii) The Concessionaire shall have obtained all Applicable Permits, including but not limited to permits, licences, authorisations and certifications specified in the Forest Regulations, trade licences, revenue authority certifications and water licenses.
- (iii) Arrangements shall have been made with respect to the treatment of Government employees engaged in the day to day management of the Plantation as may be agreed upon by the parties;
- (iv) Affected communities will be informed of the intent of the government to license the plantation to EQUATORIA TEAK COMPANY LTD and its incumbent developments. This meeting will set out and explain the impacts and processes the Concessionaire will follow and will explain the stakeholder's process to be followed.

**5. CONSIDERATION**

**5.1 Levies and Royalties**

In consideration for the concession granted through this Agreement the Concessionaire will regularly pay royalties on the following terms:

- (i) Selling of forestry produce which shall be based on volume of whole standing trees or merchantable volume considering clause (ii) of his section.
- (ii) A royalty of USD\$ 100 per cubic meter (m<sup>3</sup>) of sawn board exported. This royalty value will be reviewed and if necessary re-negotiated every two years using as reference points the international sales price development as achieved by the Concessionaire and the production cost development of the Concessionaire as a base for negotiation.
- (iii) The royalty payment as defined in 5.1 (i) above will be paid as follows;
  - a. Eighty percent (80%) to Western Equatoria State Ministry of Agriculture.
  - b. Twenty percent (20%) to Yambio County Local Government.
- (iv) Customs and clearance duties will be payable at the rate of ten percent (10%) of the royalty value (as defined in clause 5.1 (i) above) of every cubic meter (m<sup>3</sup>) of timber being exported. This sum will be paid as Custom Clearance to Customs Office in Yambio, State Headquarters.
- (v) The concessionaire will pay an amount of US\$ 100,000 (one hundred thousand US\$) into a social fund account. The money will be spend on community development projects as will be determined with stake holding communities at the second stakeholders meeting not later than 6 months after the signing of this agreement.
- (vi) A further social fund contribution will be paid by the Concessionaire into a community fund at a rate of US\$ 5 per cubic meter (m<sup>3</sup>) of sawn board exported.

**6. COMMUNITY AND THIRD PARTY RIGHTS.**

**6.1 Village Community Rights**

**6.1.1** Without prejudice to the provisions of Section 7 of this Agreement, the Concessionaire shall, as far as may be reasonably practicable, have due regard to the wishes of the Village Communities living adjacent to the Plantation and their customary dependence on the Plantation with respect to forest products (including controlled access to fuel wood, house construction material, thatching grass and non timber forests products) and employment, and shall avoid any action which might tend to prejudice good relations between the said Village Communities and the Concessionaire or Government.

**6.1.2** For the better performance of the Concessionaire's obligation under section 6.1.1, the Concessionaire shall prepare and submit to the Government for approval within a period of six (6) months, as an Addendum to the Forest Management Plan, the Concessionaire's proposals covering social responsibility.

**6.1.3** The Concessionaire's proposals contemplated in clause 6.1.2 shall in particular deal with:

- (i) Social and economic empowerment in particular employment generation, including preference to communities adjacent to the plantation as far as possible, award of sub-contracts for forest development, training and skills development services and promotion of small businesses;
- (ii) Clear plans and strategies on mode, time and the extent to which South Sudanese staff shall occupy management positions and senior officer ranks;
- (iii) Contribution towards community development including schools, health centres and cooperative societies;
- (iv) Regular consultations with Village Communities and mechanisms for resolving any disputes; and
- (v) Rural training in forestry and/or nursery tree development, including provision of necessary inputs, environmental protection and any other related aspects.

**6.1.4** The Concessionaire shall use its best endeavours to implement the social responsibility programme provided for under Clause 6.1.2.

## **6.2 Designated Areas**

The Concessionaire acknowledges that there might exist Designated Areas within the Plantation area which are excluded from the concession hereby granted and accordingly the Concessionaire hereby agrees to permit uninterrupted access to the Designated Areas by the Designated Areas personnel and not to take any action which might tend to prejudice good relations between the said personnel and the Concessionaire..

## **6.3 Sub- contracts with Third Parties**

The Concessionaire may sub-contract the performance of some of the Concessionaire's obligations under this Agreement from time to time provided that:

- (a) Notwithstanding such sub-contracts, the Concessionaire shall remain solely responsible to the Government for the performance of the Concessionaire's obligations hereunder;
- (b) The Concessionaire shall remain in compliance with and shall require all of its Contractors to comply with all Applicable Laws, including but not limited to labour codes, workers' safety regulations and environmental protection; and
- (c) The Concessionaire shall give due priority to prospective Contractors residing in villages adjacent to the Plantation.



## **7. OBLIGATIONS AND UNDERTAKINGS**

### **7.1 Obligations**

In addition to and not in derogation or substitution of any of the obligations set out elsewhere in this Agreement, the Parties agree and undertake as under:

#### **(a) General Obligations of the Concessionaire**

The Concessionaire shall at its own expense:

- (1) investigate, study, plan, design appropriate manuals for and operate and maintain the Plantation in accordance with the provisions of this Agreement and Applicable Laws;
- (2) obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance therewith at all times during the Concession Period;
- (3) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used in or incorporated in the Concessionaire's operations;
- (4) provide all assistance to all persons whom the Government may at any time nominate to supervise and/or monitor the Concessionaire's obligations assumed under this Agreement;
- (5) prepare and furnish to the Government reports on a regular basis relating to the Concessionaire's undertakings with regard to the social responsibility programme aforementioned;
- (6) appoint, supervise, monitor and control the activities of any Contractor under this Agreement and ensure that all Contractors abide by the provisions of this Agreement;
- (7) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under his Agreement;
- (8) develop, implement and administer a surveillance and safety programme for the operations of the Plantation, the Concessionaire's saw mills(if any) and equipment and the Contractors' personnel engaged in the provision of any services under any of the sub-contracts, including correction of safety violations, deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice;
- (9) take all reasonable precautions for the prevention of accidents on or about the Plantation and provide all necessary and emergency medical aid to accident victims;

- (10) not to place or create nor permit any Contractor or other person claiming through or under the Concessionaire to create or place any Encumbrance over all or any part of the Plantation assets, or on any rights of the Concessionaire therein, save and except as expressly set forth in this Agreement;
- (11) undertake the construction of sawmills, if necessary, and in doing so observe and fulfil the environmental and other requirements under the Applicable Laws and Applicable Permits;
- (12) Ensure that the Plantation remains free from encroachment, any act of encroachment will be reported by the Concessionaire within a period of seven (7) days, it is the government's responsibility to remove encroaching parties within a period of thirty (30) days.
- (13) abide by all specifications and standards issued from time to time by the Government in relation to the maintenance of the Plantation and to obtain and, once it has first been granted, keep in place certification from the Forestry Stewardship Council and or the International Standards Organisation;
- (14) undertake, do and perform all acts, deeds and things as may be necessary or required to adhere to the Forest Management Plan and to abide by Good Industry Practice in the discharge of the Concessionaire's obligations pursuant to this Agreement;
- (15) designate and appoint suitable officers or representatives, as the Concessionaire may deem appropriate, to discharge the Concessionaire's obligations hereunder and to be responsible for all necessary exchange of information required pursuant to this Agreement;

(b) **Ancillary Obligations**

The Concessionaire shall:

- (i) perform, fulfil and observe all obligations rules and regulations imposed or to be imposed on the operators of forests by or under the Forest Act or any statutory modification or extension thereof or substitution of the same for the time being in force so far as the same may extend or be applicable to any forest or forest operations within the Plantation and best endeavours to ensure conservation and protection of natural Biodiversity, ecosystems function and environmental considerations including soil conservation and watershed regulation;
- (ii) pay all present and future taxes, rates and assessments and all other charges and outgoings whatsoever upon or in respect of the concession and liberties granted under this Agreement.
- (iii) sell in the normal course of business all the forest produce generated by virtue of this Agreement for the best price that can reasonably be obtained for the same;

- (iv) not divert stop or dam the rivers, streams, watercourses, springs or water so as to interfere with the present supply of water to the prejudice of the Villages Communities or any person entitled to use the same without first obtaining the appropriate water right licence.
- (v) not to permit, pollute or allow pollution to rivers or streams flowing through the Plantation or do anything that may cause such pollution or be injurious to the habitat;
- (vi) construct and maintain according to the Forest Management Plan, roads for the conveyance of the Plantation produce through the Plantation and general access thereto;
- (vii) make arrangements with local authorities for the construction and or maintenance of the access roads leading to and/ or adjoining various sections of the Plantation, and

## **7.2 Access by Government**

The Concessionaire, for itself and its assigns and to the extent that this obligation may continue throughout the Concession Period and any extension thereof, shall, at all times, permit the Government or its authorised agents and officers of any Governmental agency having jurisdiction over the Plantation including those concerned with safety, security or environmental protection, at all reasonable times to enter upon inspect and examine the Plantation and any installations thereon for the purposes of ascertaining the condition thereof and the manner of managing the same and the quantity of forest products got on the Plantation or for any other reasonable purposes and to take samples, plans and measurements necessary for their examination and for the purposes aforesaid to have all necessary assistance from the workers and staff of the Concessionaire.

## **7.3 Obligations of Government**

The Government shall:

- (i) hand over the Plantation together with all sketch plans of the Plantation area;
- (ii) provide necessary assistance to the Concessionaire in securing Applicable Permits;
- (iii) grant in a timely manner all such approvals, permissions and authorisations that the Concessionaire may require or is obliged to seek from the Government in connection with the management and development of the Plantation and the general performance of the Concessionaire's obligations under this Agreement;
- (iv) ensure peaceful use of the Plantation by the Concessionaire under and in accordance with the provisions of this Agreement without let or hindrance from the Government or persons claiming through or under it.

## **7.4 Natural Covenants**

The Parties recognise and undertake to each other that it is their common intention to realise the objective of the Concession hereunder through the discharge of their respective obligations hereby assumed.

In that regard the Parties agree as follows;

- 7.4.1 The Concessionaire shall submit annual reports to the Directorate of Forestry under Ministry of Agriculture and Forestry (GOSS) with copies the Directorate of Forestry under Ministry of Agriculture (WES) about the operations of the Plantation, covering such areas as short-term management plans, production records, harvested areas, replanted areas, nurseries.
- 7.4.2 The Government may at any time request the Concessionaire to provide additional information it reasonably deems appropriate for the proper exercise of its powers of inspection and supervision in order to ensure compliance with the Forest Management Plan. In this regard the Government may appoint an agent or agencies to exercise its rights hereunder and such agent or agents shall have like rights of access to the Plantation and the Concessionaire's detailed plans and audited financial information.
- 7.4.3 All the technical data, plans and audited financial information released by the Concessionaire to the Government under this Agreement shall be recognised by the Government as confidential and, except as provided herein, shall belong to the Concessionaire. Such information shall at all times and for all purposes be held by the Government in a confidential manner and shall not, without the prior written consent of the Concessionaire:
- (i) be disclosed by the Government or its agents to any person, firm or corporation, except those Government employees or agents who are required to utilise such information in connection with the supervision of the Concessionaire's obligations hereunder during the Concession Period and any extension thereof, and
  - (ii) be disclosed to any person firm or corporation or copied or used by the Government, its employees or agents at any time following the expiration of the Concession Period or early termination thereof, except where such use is necessary in order to maintain the operations of the Plantation after the Concession period.

## **8. FORCE MAJEURE**

### **8.1 Events of Force Majeure**

- 8.1.1. If performance by a Party of any part of this Agreement is made impossible or impractical by a Force Majeure Event, performance by that Party for a period equal to the period of that prevention, delay or stoppage shall be excused.
- 8.1.2. Force Majeure shall also avail in the cases of a change in law which fundamentally alters the positions of the Parties to this Agreement; expropriation or compulsory acquisition by any Governmental agency of any assets or rights of the Concessionaire or of Contractors deriving rights under the Concessionaire or any unlawful or unauthorised revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of its Contractors to perform their respective obligations hereunder (other than a consent the obtaining of which is a condition precedent) provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any of its Contractor's inability or failure to comply with any condition relating to grant, maintenance or removal of such consents or permits.

**8.2. Effect of Force Majeure**

**8.2.2. Upon the occurrence of any Force Majeure Event the following shall apply:**

- (a) There shall be no Termination of this Agreement for reasons of force majeure occurrences except as provided in Section 8.3 hereinafter;
- (b) Further to the provisions of section 8.1.1, in the event of occurrence of a Force Majeure Event, the Concessionaire shall continue to make all reasonable efforts to discharge its obligations under this Agreement, but if it shall be unable or shall be prevented from doing so, the Concession Period shall, having due regard to the extent of the impact thereof as determined by the Government, be extended by the period affected on account thereof;
- (c) The Parties shall bear their respective costs, if any, arising from the occurrence of any Force Majeure Event, provided that the Government at its option may reimburse any force majeure costs to the Concessionaire through a remission of levies and/or royalties or compensate the Concessionaire for such costs by appropriate extension of the Concession Period.

**8.3. Termination**

If a Force Majeure Event continues or is, in the reasonable judgment of the Parties, likely to continue beyond a period of one hundred and twenty (120) days, the Parties may mutually decide to terminate this Agreement or continue to perform their respective obligations on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Party claiming relief out of such event shall after the expiry of ninety (90) days, be entitled to terminate this Agreement by issuing a Termination Notice.

**8.4. Dispute Resolution**

In the event the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the Dispute Resolution Procedure, provided however that the burden of proof as to the occurrence or existence of such force majeure event shall be upon the Party claiming relief and/or excuse on account of such force majeure event.

**8.5. Liability for other losses, damages etc.**

Save and except as expressly provided in this Section 8, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to Section 8.

**8.6. Duty to Report**

The affected Party shall discharge the following obligations in relation to reporting the occurrence of a force majeure event to the other Party:

- (a) The affected party shall not claim any relief for or in respect of a force majeure event unless it shall have notified the other party in writing of the occurrence of the force majeure event as soon as reasonably practicable, and in any event within seven (7) days after the affected Party knew, or ought reasonably to have known, of its occurrence and the probable material effect that the event is likely to have on the performance of its obligations under this Agreement.

- (b) Any notice pursuant to Section 8.6 shall include full particulars of:
  - (i) The nature and extent of each force majeure event which is the subject of any claim for relief under this Section 8 with evidence in support thereof;
  - (ii) The estimated duration and the effect or probable effect which such event is having or will have on the affected Party's performance of its obligations under the Agreement;
  - (iii) The measures which the affected Party is taking or proposes to take, to alleviate the impact of such event; and
  - (iv) Any other information relevant to the affected Party's claim.

#### **8.7. Excuse from Performance of Obligations**

If the affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent of such Force Majeure Event provided that;

- (a) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the force majeure event;
- (b) The affected party shall make all reasonable efforts to migrate or limit damage to the other party arising out of or as a result of the existence or occurrence of such force majeure event and to use the same with due diligence; and
- (c) When the affected Party is due to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder

### **9. PROCEDURES FOR THE RESOLUTION OF CONFLICTS OR DISPUTES ARISING FROM THE AGREEMENT**

**9.1.** In the case of any conflict and / or disputes arising from the Agreement and its implementation, Parties to the Agreement shall;

- a. Amicably negotiate with each other and reach Agreement or Amendment within ten (10) days.
- b. Mutually agree or revert to using arbitration by each party choosing one arbitrator and the two arbitrators shall choose another arbitrator who is neutral and who shall be their chairperson .The arbitrators shall make their decision or award within a period of thirty (30) days.

**9.2** The arbitration shall be conducted in accordance with the arbitration laws of Southern Sudan.

- 9.3** The parties hereby agree that any arbitration proceeding conducted pursuant to this Agreement shall be held in Juba, South Sudan and the proceedings shall be conducted in English.
- 9.4** Compliance and fulfilment of any arbitration verdict shall be binding on the parties.

## **10. EVENTS OF DEFAULT AND TERMINATION**

### **10.1 Concessionaire Events of Default**

Any of the following events shall constitute an event of default by the Concessionaire unless such event has occurred as a result of the Governments action or failure to act;

- (i) The Concessionaire fails to take possession of the Plantation and commence performance of its obligations under this Agreement within sixty (60) days from the Commencement Date;
- (ii) Any representation made or warranty given by the Concessionaire pursuant to this Agreement is found to be false or misleading;
- (iii) The Concessionaire creates any encumbrance on the Plantation in favour of any person save and except as otherwise expressly permitted under Section 2.8.3 hereof;
- (iv) A resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the concessionaire;
- (v) Any petition for winding up the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that such entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and provided further that:
  - a. The amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement;
  - b. The amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has a creditworthiness at least as good as that of the concessionaire as at the Commencement Date; and
  - c. This Agreement and other contracts for the fulfilment of the Concessionaire's obligations under this Agreement remains in full force and effect.
- (vi) The Concessionaire has delayed any payment that has fallen due under this Agreement and has remained unpaid for any applicable period of grace or, in any event, for a period exceeding sixty (60) days;

- (vii) The Concessionaire suspends or abandons the management of the Plantation without the prior consent of the Government, provided that the Concessionaire shall be deemed not to have abandoned/ suspended management if such suspension/ abandonment is (a) as a result of force majeure event and is only for the period such force majeure is continuing, or (b) is on account of a breach of its obligation under this Agreement by the Government;
- (viii) The Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;
- (ix) The Concessionaire suffers an attachment being levied on any of its assets causing a Material Adverse Effect on the operations of the Plantation and such attachment continues for a period exceeding thirty (30) days;
- (x) The Concessionaire is otherwise in material breach of this Agreement.

#### **10.2. Government's events of Default**

The following events shall constitute events of default on the part of the Government, unless any such event has occurred as a result of the Concessionaire's default or due to a force majeure event:

Government is in breach of this Agreement and has failed to cure the breach within sixty (60) days of receipt of notice in that behalf from the Concessionaire;

Government repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;

Government or any governmental agency has by an act of commission or omission created circumstances that have a Material Adverse Effect on the performance of its obligation by the Concessionaire and has failed to cure the same within thirty (30) days of notice thereof by the Concessionaire;

Any representation or warranty given by the Government under this Agreement is found to be false or misleading.

The Government is otherwise in material breach of this agreement.

#### **10.3 Termination due to Events of Default**

##### **10.3.1. Termination for Concessionaire's Event of Default:**

- (i) Without prejudice to any right or remedy which the Government may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire event of default, as provided under Section 10.1, the Government shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Government shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (herein referred to as the Preliminary Notice). In case the underlying breach is not cured within a period of thirty (30) days from the date of the Preliminary Notice (hereinafter referred to as the Cure Period) the Government shall be entitled to terminate this Agreement by issuing the Termination Notice;



- (ii) The following shall apply in respect of the cure of any of the defaults and / or breaches of this Agreement:
  - (a) The Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for damages caused by its breach or default;
  - (b) The Cure Period shall not in any way be extended by any period of suspension under this Agreement;
  - (c) If the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire, this must be approved by a governmental agency hereunder, the applicable Cure Period shall be extended for the governmental agency to accord the required approval;
- (iii) Upon Termination by the Government on account of occurrence of a Concessionaire event of default, the Parties shall discuss in good faith all issues relating to the surrender of the Plantation by the Concessionaire, including Termination Payments and assistance to the successor operator of the Plantation.

#### **10.3.2. Termination for Government's event of default**

- (i) The Concessionaire may, upon the occurrence and continuation of any of the Government's event of default, terminate this Agreement by issuing a Termination Notice to the Government.

#### **10.3.3. Rights of the Government on Termination**

Upon Termination of this Agreement for any reason whatsoever, the Government shall have the power and authority to:

- (a) Take possession and control of the Plantation forthwith;
- (b) Prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Plantation or any part thereof;
- (c) Step in and succeed upon election by the Government without the necessity of any further action by the Concessionaire under such contracts as the Government may in its discussion deem appropriate with effect from the date of communication of such election to any concerned parties in any such contracts; provided that any sums claimed by such concerned parties as being due and owing for work done and services performed or accruing an account of any act, omission or event prior to such date of election shall always constitute debt between the Concessionaire and such concerned party and the Government shall in no way or manner be liable or responsible for such sums. The Concessionaire shall ensure that any contracts it enters into shall contain provisions necessary to give effect to the provision of this Section 10.4.

## **10.4. Obligation of the Government on Termination**

### **10.4.1. Termination payment**

Upon Termination by either Party on account of occurrence of an event of default by the other Party, the Parties shall reimburse each other, by way of Termination Payment, an amount equal to the costs actually incurred by the Parties, and so certified by a reputable auditing firm established in South Sudan, for the management and development of the Plantation pursuant to this Agreement as at the date of Termination, less any returns recouped by the either Party from, in the case of the Concessionaire, sales of forest products, and, in the case of the Government, receipts, development levies and/or royalties.

### **10.4.2. Payment Instructions**

Notwithstanding any instructions to the contrary issued or any dispute raised by either Party, the Termination Payment and all other payments that would become payable by the other Party under the provisions of this Agreement shall be made only by way of credit directly to the bank account designated by prospective payee and advised to the other Party in writing. Any payment so made shall, to the extent of such payment, constitute a valid discharge to the paying Party of its obligations towards the other Party with regard to the Termination Payment and payments of any other monies due hereunder.

### **10.4.3. Preservation of legal rights**

Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its rights to claim and recover money damages and other rights and remedies which it may have in law or contract. All rights and obligations of either Party under this Agreement, including without limitation to Termination Payment, shall survive the termination of this Agreement to the extent that such survival is necessary for giving effect to such rights and obligations.

## **11. CHANGE IN LAW**

### **11.1. Change in Law**

In case of Change in Laws, and the Concessionaire suffers a material increase in costs or reduction in net after tax returns or other financial burden, the Concessionaire may notify the same to the Government and propose amendments to this Agreement so as to put the Concessionaire in the same position as it would have occupied had there been no such Change in Law resulting in such material increase in costs, reduction in return or other financial burden as aforesaid. All claims resulting from a change in Law will be submitted, investigated and settled in a period of six (6) calendar months. Parties to this agreement may appoint an independent agent or agents to assess such suffer caused to the Concessionaire.

### **11.2. Review of Agreements**

The Government shall upon being notified by the Concessionaire of the said Change in Law and proposed amendments to this Agreement, assess the effect of the Change in Law and determine the necessary adjustments to be made to this

Agreement so as to restore the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law, payable from the date the law has been gazetted.

## **12. RETURN OF PLANTATION UPON EXPIRY OF CONCESSION PERIOD**

### **12.1. Hand Over of Plantation**

Upon the expiry of the Concession by passage of time and in the normal course, the Concessionaire shall hand over peaceful possession of the Plantation and all its immovable assets free of any Encumbrances and at no cost to the Government. At least thirty (30) days prior to the hand over the Concessionaire shall make arrangements with the Government for a joint physical inspection of the Plantation and the books and records which shall then be in use by the Government for the maintenance and development of the Plantation. Prior to the hand over, the Concessionaire shall be obligated to remedy any defects which shall be identified following the said physical inspection.

## **13. MISCELLANEOUS**

### **13.1. Assignment and Charges**

**13.1.1.** Save as otherwise provided in this Agreement, this Agreement shall not be assigned by the Concessionaire save and except with the prior consent in writing of the Government, which Government shall be entitled to withhold without assigning any reason therefore, except in the case of intra group assignment where there is no change to the beneficial shareholders of the Concessionaire.

**13.1.2.** Subject to sub-section 13.1.3 below, the Concessionaire shall not increase nor permit to subsist any Encumbrance over or otherwise transfer or dispose of all any of its rights and benefits under this Agreement except with the prior written consent of the Government which the Government shall be entitled to withhold without assigning any reason therefore.

**13.1.3** The restrictions set forth in sub-sections 13.1.1, 13.1.2, 2.8.3, 7.1(a)10 and 10.1(iii) above shall not apply to:

- (i) Liens/encumbrances arising by operation of law in the ordinary course of business of the management and development of the Plantation; and
- (ii) Mortgages, pledges, hypothecation of goods/assets, other than the Plantation and its assets, as security for indebtedness in favour of credit institutions.

### **13.2. Liability and Indemnity**

#### **13.2.1. General Indemnity**

- (i) The Concessionaire shall indemnify, defend and hold the Government harmless against any and all proceedings, actions and third party claims arising out of breach by the Concessionaire of any of its obligations under this Agreement except to the extent that any such claim has arisen due to Government event of default.

- (ii) The Government will indemnify, defend and hold the Concessionaire against any claim of whatever kind and nature arising out of defect in the title and/or rights of the Government and/or arising out of breach by the Government, its officers and agents of any obligation of the Government under this Agreement except to the extent that any such claim has arisen due to the Concessionaire's event of default.
- (iii) Without limiting the generality of Section 14.2, the Concessionaire shall fully indemnify, save harmless and defend the Government from and against all damages which the Government may suffer or pay by reason of any demands, claims, suits, or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or the Concessionaire's Contractors in performing the Concessionaire's obligations. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise to secure suspension of the restraint order or injunction.
- (iv) In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of indemnity under Section 14.2, (the "Indemnified Party") it shall notify the other Party (the "Indemnifying Party") within fourteen (14) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to dispute or contest the claim, it may conduct the proceedings in the name of the Indemnified Party subject to the Indemnified Party being secured against any costs to its reasonable satisfaction.

### 13.3. Governing Law and Jurisdiction

This Agreement shall be construed in accordance with and governed by the laws of South Sudan and the courts of South Sudan shall have jurisdiction in all matters relating to the Agreement.

### 13.4. Waiver

- (a) Waiver by either Party of any default by the other Party in observance and performance of any provisions of or obligations under this Agreement:
  - (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
  - (ii) shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
  - (iii) Shall not affect the validity or enforceability of this Agreement in any other manner.
- (b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation there under nor time or other indulgence granted by a Party

to the other Party shall be treated or deemed as a waiver of such breach or acceptance of any variation or relinquishment of any such right hereunder.

### **13.5. Survival of Rights**

Termination of this Agreement (a) shall not relieve the Concessionaire or the Government of any obligation hereunder which expressly or by implication survives termination hereof, and (b) except as otherwise provided in this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligation or liability for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination

### **13.6. Amendments**

This Agreement and the Annexes together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by both Parties hereto and evidenced in writing.

### **13.7. Notices**

The Government of Western Equatorial State which is party to this Agreement shall have the Governor of West Equatoria and the Minister of Agriculture and Forestry or his/her official representatives as focal or contact persons.

The client to the Agreement shall have the Managing Director of Southern Sudan Teak Company Ltd, or his/her representatives/officials as focal or contact persons.

All official correspondences and notices shall be in English, and physically delivered with acknowledgement of receipt documented and exchanged for verification and references.

### **13.8. Severability**

If for any reason any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or other instrumentality to be invalid, illegal or unenforceable, the validity legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, illegal or unenforceable provisions as nearly as practicable; provided however that failure to agree upon such provisions shall not be subject to dispute resolution under this agreement or otherwise.

### **13.9. Exclusion of Implied warranties.**

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by any Party not contained in a binding legal agreement executed by the Parties.

### **13.10. Language**

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in the English language.

**Signature, attached as P1**

In witnessed hereof the parties to this agreement have hereunto affixed their respective signatures at Juba, Southern Sudan on .....day of..... 2006 in the presence of the witnesses as hereunder:

**The Government**

(i) Minister for Finance, Trade  
And Investment Western Equatoria State  
Government

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

(ii) Minister for Agriculture, Environment  
and Rural Development,  
Western Equatoria State Government

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

**Concessionaire**

(i) Equatoria Teak Company Limited

Signature: \_\_\_\_\_  
Name: Peter Skov  
Title: Managing Director

(ii) Signature: \_\_\_\_\_  
Name: Chris Bekker  
Title: Director

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

**Witnesses**

Signature: \_\_\_\_\_  
Name: Col. H.E.Patrick Zamoi  
Title: Governor Western Equatoria State.

Signature: \_\_\_\_\_  
Name: Hon.Lawrance Korbandy  
Title: Advocate

**Ministry of Legal Affairs and Constitutional development**  
**ATTACHED AS P2**

**Authentication No:** \_\_\_\_\_ / \_\_\_\_\_ **2006**

I, Majok Mading Majok, the Legal Counsel General, authorized by the Minister of Justice, in accordance with powers thereof, under the provisions of Article (6) of the Ministry of Justice (organization) Act 1983, attest that the parties to this agreement have signed the same before me, in the presence of the witnesses.

Made under my hand and sealed on the ----- of ----- 2006 AD

**Annexure A; CONCESSION DESCRIPTION AND MAP**



**ANNEXURE B; LIST F ASSETS AND IMPROVEMENTS**

**ANNEXURE C; TEAK AGREEMENT BETWEEN LOGOTECH CO. LTD AND PROVISIONAL  
ECONOMIC COMMISSION**

**IGNORED, NOT REQUIRED**

## **ANNEXURE D; PRESCRIBED CONTENTS OF A FOREST MANAGEMENT PLAN**

1. The Forest Management Plan (FMP) is divided into two sections:
  - A. Background to the plan, information on the Licensee, the socio-economic environment in which the Licensee will operate and the basic resource information;
  - B. Proposed future management activities explaining how the resource will be used and the constraints to be addressed;

### **2. TABLE OF CONTENTS FOR A FOREST MANAGEMENT PLAN**

- i. Title page (showing duration of plan, date of writing/revision, concession name and Licensee)
- ii. Contents page

#### **2.1 Section A; BACKGROUND**

##### **2.1.1. EXECUTIVE SUMMARY**

##### **2.1.2. Company Profile**

##### **2.1.3. Basic Resource Data**

- a. Legal status of the management area
- b. Geographic location of the management area
- c. Description of the boundaries of the forest license

##### **2.1.4. Physical characteristics of the area**

- a. Topography and hydrology
- b. Geology and soils
- c. Climate
- d. Special features (cultural sites, etc.)

##### **2.1.5. Description of the Vegetation Types**

##### **2.1.6. Description of Principal Fauna**

##### **2.1.7. History of management**

##### **2.1.8. Economic environment**

- a. Existing physical infrastructure
- b. Social infrastructure
- c. Other resource activities within the management area
- d. Existing equipment

#### **2.2 Section B; FUTURE MANAGEMENT**

##### **2.1. OBJECTIVES OF MANAGEMENT**

##### **2.2. FOREST ORGANISATION**

##### **2.2.1. Classification of forested areas**

- a. Production forest
- b. Non production forest
- c. Other

- 2.2.2. Division of production forest
- 2.2.3. Compartments and sub-compartments
- 2.2.4. Stands and forest type stratification

### **2.3 INVENTORY OF FOREST RESOURCES**

#### **2.3.1. Timber Resources – management level inventory**

- a. Type of inventory and sampling design
- b. Inventory results according to forest type
- c. Analysis and evaluation of inventory results

#### **2.3.2. Pre-harvest inventory \***

#### **2.3.3. Post-harvest inventory \***

#### **2.3.4. Non-timber forest resources \***

#### **2.3.5. Type of Inventory and sampling design**

#### **2.3.6. Inventory results according to forest type**

#### **2.3.7. Analysis and evaluation of inventory results**

### **2.4. SILVICULTURAL PRACTICES**

#### **2.4.1. Regeneration method in accordance with the clear-felling system**

#### **2.4.2. Description of the Silvicultural regime inclusive of rotation length**

#### **2.4.3. Nursery**

#### **2.4.4. Establishment**

##### **2.4.4.1. Site Preparation**

##### **2.4.4.2. Planting and Spacing**

##### **2.4.4.3. Blanking**

##### **2.4.4.4. Fertilising**

##### **2.4.4.5. Weeding**

#### **2.4.5. Tending**

##### **2.4.5.1. Pruning**

##### **2.4.5.2. Thinning**

#### **2.4.6. Post harvest treatments**

#### **2.4.7. Supplementary planting**

#### **2.4.8. Protection**

##### **2.4.8.1. Fire**

##### **2.4.8.2. Fungi**

##### **2.4.8.3. Insects**

##### **2.4.8.4. Mammals**

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\* if applicable

## **2.5. YIELD REGULATION AND PRODUCTION OPERATIONS**

- 2.5.1. Commercial species
- 2.5.2. Species requiring protection giving justification
- 2.5.3. Calculation of cutting cycle and annual allowable cut
- 2.5.4. Division of the forest into annual harvesting units
- 2.5.5. Schedule of timber production

## **2.6. TIMBER HARVESTING OPERATIONS**

- 2.6.1. Pre- harvesting activities
- 2.6.2. Type of machinery
- 2.6.3. Harvesting activities
- 2.6.4. Felling operations
- 2.6.5. Extraction/skidding operations
- 2.6.6. Hauling operations
- 2.6.7. Post-harvesting activities
- 2.6.8. Environmental considerations in logging

## **2.7. NON-TIMBER HARVESTING OPERATIONS \***

- 2.7.1. List of species and developmental stage for harvesting
- 2.7.2. List of protected species
- 2.7.3. Methods for management, regeneration and/or propagation
- 2.7.4. Estimated production cycle
- 2.7.5. Division of the forest into harvesting units
- 2.7.6. Specifications for harvesting
- 2.7.7. Industrialisation and marketing of the products

## **2.8. OTHER GOODS AND SERVICES \***

## **2.9. MARKETS AND UTILISATION**

- 2.9.1. Expected products
- 2.9.2. Industrialisation
- 2.9.3. Marketing including demands and constraints

## **2.10 ROAD OPERATIONS**

- 2.10.1 General road network
- 2.10.2 Road requirements
- 2.10.3 Standards for construction and maintenance of roads

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\* if applicable

\* e.g. tourism, may be presented as an annex to the plan

### **3 ENVIRONMENTAL CONSERVATION MEASURES**

- 3.1. Buffer zones
- 3.2. Wildlife conservation
- 3.3. Use of chemicals
- 3.4. Bio-diversity conservation
- 3.5. Soil and water conservation

### **4. MONITORING AND RESEARCH**

- 4.1. Previous and current research
- 4.2. Proposals for experimental or permanent sample plots
- 4.3. Current research activities and sites
- 4.4. Plans for monitoring effects of logging and/or other forest management activities
- 4.5. Cooperation with research organisations
- 4.6. Other research interests
- 4.7. Preservation and utilisation of selected seed and vegetative material.

### **5. FACTORS WHICH INFLUENCE FOREST MANAGEMENT**

- 5.1. Bio-physical conditions
- 5.2. Markets, industrialisation
- 5.3. Social conditions
  - 5.3.1. Employment policies and issues
  - 5.3.2. Health and occupational safety
  - 5.3.3. Training initiatives
  - 5.3.4. Trade unions
  - 5.3.5. Employee welfare (social security, supply of rations, potable water)
  - 5.3.6. Communication systems
- 5.4. Resource use conflicts

## **6 FOREST PROTECTION**

### **6.1 Security and Vigilance Plan**

- 6.1.1 Demarcation, signage, and maintenance of boundary lines of management area
- 6.1.2 Measures for monitoring and patrols

### **6.2 Integrated Pest Management Plan \***

### **6.3 Fire Management Plan \***

- 6.3.1 Prevention
- 6.3.2 Pre- suppression (including prescribed burning and detection)
- 6.3.3 Suppression within the management area

## **7 INFORMATION MANAGEMENT SYSTEM**

### **7.1 Description of information management system**

### **7.2 Stand and sub-compartment registers**

### **7.3 Harvesting registers**

### **7.4 Accounting registers**

### **7.5 Fire management registers**

### **7.6 Pest management registers**

### **7.7 Road maintenance registers**

### **7.8 Inventory registers**

### **7.9 Record storage and retrieval**

## **8 SCHEDULE FOR IMPLEMENTATION OF ACTIVITIES**

## **9 MAPS**

### **9.1 Topographic maps**

- 9.1.1 Existing and proposed roads
- 9.1.2 Settlements, camps, etc.

### **9.2 Watersheds and drainages**

### **9.3 Ecosystem maps (vegetation cover, soil types, climatic factors)**

### **9.4 Forest type classification**

## **10 ANNEXES**

- 10.1 Stakeholder Information Meeting
- 10.2 Stakeholder Meeting
- 10.3 Social Agreement.

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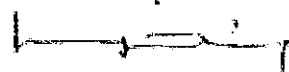
\* may be presented as an annex to the plan

**Ministry of Legal Affairs & Constitutional Development**

Authentication No: 11 June 2006

I, Majok Mading Majok, the Under Secretary, Legal Affairs & Constitutional Development, authorized by the Minister of the Ministry, in accordance with powers thereof, under the provisions of Article (6) of the Ministry of Justice (organization) Act 1983, attest that the parties to this agreement have signed the same before me in the presence of the witnesses

Made under my hand and sealed on the 28<sup>th</sup> day of June 2006 AD



H. E. Majok Mading Majok  
For Minister of Legal Affairs &  
Constitutional Development,  
Government of Southern  
Sudan

JD





In witness hereof the parties to this agreement have hereunto affixed their respective signatures at Juba, Southern Sudan this 28<sup>th</sup> day of June 2006 in the presence of the witnesses as hereunder

**The Government**

(i) Minister for Finance, Trade  
And Investment, Western Equatoria State

Government

Signature \_\_\_\_\_

Name: John Dabi

Title: Minister

(ii) Minister for Agriculture, Environment  
and Rural Development,

Western Equatoria State Government

Signature \_\_\_\_\_

Name: Jackson Zowai

Title: Minister

**Concessionaire**

(i) Southern Sudan Teak Company Limited

Signature \_\_\_\_\_

Name: Peter Skov

Title: Managing Director

(ii) Signature \_\_\_\_\_

Name: Chris Bekker

Title: Director

**Witnesses**

Signature \_\_\_\_\_

Name: H.E. Joseph Ngole

Title: Acting Governor, Western Equatoria State

Signature \_\_\_\_\_

Name: Lawrence Korbandy

Title: Advocate & Commissioner  
For Oaths

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