

GOVERNMENT OF THE PROVINCE OF ALBERTA

FORESTS ACT

FOREST MANAGEMENT AGREEMENT

(O.C. 28/2002)

Approved and Ordered

Lois Hole  
Lieutenant Governor

Edmonton, February 6, 2002

Upon the recommendation of the Honourable Minister of Sustainable Resource Development, the Lieutenant Governor in Council, pursuant to section 16 of the Forests Act, approves the entry by the Minister of Sustainable Resource Development into a forest management agreement with Manning Diversified Forest Products Ltd. in accordance with the attached Appendix.

Shirley McClellan (Acting Chair)

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**MEMORANDUM OF AGREEMENT**

**BETWEEN:**

**HER MAJESTY THE QUEEN** in the right of the Province of Alberta, as represented by the Minister of Sustainable Resource Development, (hereinafter referred to as "the Minister"),

OF THE FIRST PART

and

**MANNING DIVERSIFIED FOREST PRODUCTS LTD.** a body corporate, registered under the laws of Alberta, with its head office in Manning, Alberta, (hereinafter referred to as "the Company"),

OF THE SECOND PART

**WHEREAS** the Company owns and operates a major lumber production facility ("the Sawmill") at Manning, Alberta for the manufacturing of lumber, woodchips and other forest products with a rated capacity of 100 million board feet of lumber annually; and

**WHEREAS** the Minister, recognizing the Company's needs for a forest management agreement to warrant the continued operation of its facilities, desires to provide for a perpetual sustained yield of timber for such operations; and

**WHEREAS** it has been mutually agreed by the parties hereto that it is a convenient time to enter into a forest management agreement to supply a portion of the Company's timber needs for the operation of the Sawmill; and

**WHEREAS** the Minister desires to provide for sustainable development of all resources and to provide for the fullest possible utilization of timber from the forest management area and stable employment in local communities by maximizing the timber resource base while maintaining a forest environment of high quality;

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises, terms, conditions, covenants, stipulations, agreements and provisions herein contained, the Minister and the Company hereby agree as follows:

### **DEFINITIONS**

1. (1) In this Agreement
  - (a) "annual allowable cut" is the amount of timber that may be harvested in any one year as stipulated in the pertinent forest management plan approved by the Minister;
  - (b) "Crown" means Her Majesty the Queen in right of Alberta;
  - (c) "cubic metre" shall have the same meaning as that prescribed by the Timber Management Regulation;
  - (d) "cut control period" means a period of five consecutive forest management operating years;
  - (e) "Department" means the Department of Sustainable Resource Development;
  - (f) "dollar" means Canadian currency of the value of one Canadian dollar, or the equivalent value in any other currency;
  - (g) "forest management area" refers to the tract of forest land as specifically defined in paragraph 3 over which the Company has been given rights for establishing, growing, harvesting and removing timber on a perpetual sustained yield basis for a defined period of time;
  - (h) "original net forest management area" means the net area established for the forest management area as of the commencement date of this Agreement and agreed upon by the Company and the Minister;
  - (i) "periodic allowable cut" is the total of the annual allowable cuts approved for a five-year cut control period;
  - (j) "Scaling Regulation" means Alberta Regulation 336/79 authorized by Ministerial Order 40/79;
  - (k) "Surface Materials Regulation" means Alberta Regulation 11/78;
  - (l) "Timber Management Regulation" means Alberta Regulation 60/73 authorized under Order-in-Council 309/73; and
  - (m) "Timber Regulation" means Alberta Regulation 404/92.
- (2) Any reference in this Agreement to a statute or regulation of Alberta shall mean for the purposes of this Agreement, those Alberta Statutes and the regulations as each may from time to time be amended respectively or such Acts or regulations as may from time to time be substituted therefor, and terms

defined in the *Forests Act*, or the *Public Lands Act*, and the regulations made thereunder shall for the purpose of this Agreement, have the meaning given to them by those Acts and regulations as each may be amended or substituted from time to time.

2. (1) This Agreement shall commence on the 12<sup>th</sup> day of March, 2002, (hereinafter referred to as the “commencement date”), and shall expire on the 11<sup>th</sup> day of March, 2022, unless renewed under the provisions of subparagraph (3).
- (2) It is the intention of the parties hereto to continue the rights of the Company under paragraph 7 to establish, grow, harvest and remove coniferous timber on the forest management area for terms of twenty years if pursuant to subparagraph (3) mutual agreement thereon can be reached by the Minister and the Company and such agreement is approved by the Lieutenant Governor in Council.
- (3) Subject to the approval of the Lieutenant Governor in Council and provided that the Company is not in default as to any of the terms, conditions, stipulations, covenants, agreements and provisions of this Agreement, the Company shall be entitled to a renewal of this Agreement whereby its rights under paragraph 7 to establish, grow, harvest and remove timber are continued on condition that
  - (a) the Company gives notice to the Minister during the ninth year following the commencement date of this Agreement of its desire to renew this Agreement; and
  - (b) mutually acceptable terms, conditions, stipulations, covenants, agreements and provisions including further renewal provisions or other requirements can be renegotiated at the time of renewal.
- (4) Within sixty (60) days of receiving such notice under subparagraph (3)(a), the Minister shall commence discussions with the Company to negotiate the terms, conditions, stipulations, covenants, agreements and provisions of the renewal agreement.
- (5) The Company and the Minister shall act reasonably and continue to carry out negotiations in an attempt to agree on a renewal Agreement with a term of twenty years and have it approved by the Lieutenant Governor in Council prior to the tenth anniversary of this Agreement.
- (6) The Company and the Minister may agree to commence negotiations earlier than provided for in subparagraph (3).
- (7) As part of ongoing review of this Agreement, once a year, on the anniversary date of this Agreement, the Company shall submit to the Minister an annual report which details the Company’s activities and contribution towards the economic, social and environmental activities associated with this Agreement. This report may be included in the annual forest management stewardship report that the Company is required to submit to the Minister each year.

## FOREST MANAGEMENT AREA

3. The Minister and the Company hereby enter into this forest management agreement in respect of the forest management area comprising, subject to paragraphs 4, 5, and 6, public lands within the boundaries shown outlined on a map registered in the Department, a copy of which is annexed hereto as Appendix "A".
4. Out of the forest management area the following are excepted:
  - (a) lands which are the subject of a disposition issued pursuant to the *Public Lands Act* prior to the date of this Agreement or lands in respect of which a disposition under the *Public Lands Act* has been approved but which issuance is pending prior to the date of this Agreement;
  - (b) lands which have been reserved under Section 18(c) of the *Public Lands Act* or in respect of which a reservation has been approved but which has not been granted prior to the date of this Agreement;
  - (c) the beds and shores of all permanent and naturally occurring bodies of water and all naturally occurring rivers, streams, watercourses and lakes; and
  - (d) lands contained within any Provincial Park, Forest Recreation area, Provincial Recreation Areas, Natural Area or Ecological Reserve prior to the date of this Agreement.
5. Whenever any of the productive or potentially productive land excepted under paragraph 4 or subsequently withdrawn from the forest management area becomes available for disposition and where such land is intended to be returned to timber production by the Minister, the Minister shall return these lands back to the forest management area in a productive or potentially productive state.

## WITHDRAWALS

6. (1) The Minister may, at any time in his discretion, after consultation with the Company with respect to the effect any such withdrawal may have on the forest management area, either permanently or for a specified term, withdraw from the forest management area:
  - (a) any land which cannot be logged without causing substantial harm to the water table or to lakes, rivers, streams or other bodies of water, to the margins of water courses;
  - (b) any lands required for rights-of-way, water resource and agricultural development or for any other purposes deemed by the Minister to be required for the human or physical resource development of the Province;
  - (c) any lands required for commercial and industrial purposes; and
  - (d) any lands which are not capable of producing timber.
- (2) A withdrawal shall take effect
  - (a) on the date the notice of withdrawal is given by the Minister to the Company, or

- (b) where the notice given states that the withdrawal shall take effect at a future date, on the date stated in the notice.
- (3) In the event from time to time of any withdrawal or withdrawals of land from the forest management area by the Minister under subparagraph (1)
  - (a) for disposition to users other than the Crown, the Company shall be entitled to reasonable compensation from the users of the area withdrawn for any loss of profit or other damage or loss suffered by the Company, including by way of example, but without limitation, damage to coniferous timber, improvements, regeneration, forest growth, or to its operations on the forest management area resulting from such withdrawal.
  - (b) for use by the Crown where the cumulative net aggregate area withdrawn does not exceed 1.5% of the original net forest management area, the Minister shall determine the compensation and arrange for reimbursement to the Company for the actual loss or damage resulting from such withdrawal to any improvements created by the Company's efforts, but not for any loss of profit, inconvenience nor increased costs reasonably incurred by the Company in harvesting an equivalent volume of timber elsewhere;
  - (c) for use by the Crown where the cumulative net aggregate area withdrawn does exceed 1.5% of the original net forest management area, the Minister shall determine the compensation in respect of such excess and arrange for reimbursement to the Company for any increased costs reasonably incurred by the Company in replacing the lost volume of timber and for any loss or damage suffered by the Company, including damage to timber, regeneration, forest growth, improvements, or to its operations on the forest management area.
- (4) For the purposes of subparagraph (3)(b) and (c), the cumulative net area withdrawn shall be calculated taking into consideration all additions to the forest management area under paragraph 5 and subparagraph (5) and all withdrawals under subparagraph (1) for use by the Crown.
- (5) Compensation under subparagraph (3)(b) and (c) may be monetary or by the addition of available public lands to the forest management area or a combination of both.
- (6) If the administration and control of any of the lands comprising the forest management area is transferred to the Crown in right of Canada, the Company shall be entitled to compensation under subparagraph (3) as if the lands were withdrawn for use by the Crown.
- (7) Monetary compensation received by the Company under this paragraph and paragraph 8(1)(b) shall only be used to offset damage to improvements such as plantations, roads, bridges or other facilities and to replace lost timber resource.
- (8) The Company shall maintain complete and accurate records of the receipt and use of all compensation funds received under this paragraph and paragraph 8(1)(b).

- (9) The Minister may from time to time at his discretion request verifiable documentation of the use of compensation funds received under this paragraph and paragraph 8(1)(b) and the Company shall comply with any such request.

### **RIGHTS OVER THE LAND**

7. (1) Subject to all the terms and conditions of this Agreement, the Minister grants to the Company the right, during the term of this Agreement, to enter upon the forest management area to establish, grow, harvest and remove coniferous timber thereon on a perpetual sustained yield basis, and for the purposes of the construction, operation and maintenance of camps, roads, wood concentration yards and other installations necessary and incidental to the Company's logging and silvicultural operations.
- (2) For the purpose of interpreting the *Surface Rights Act*, the Company is an occupant of the public lands comprising the forest management area.
- (3) The Minister shall cause land dispositions required within the forest management area for work such as roads, bridges, camps, timber processing operations and other necessary works incidental to the Company's harvesting and silvicultural operations to be issued to the Company without any dues or rental charges under the *Public Lands Act* being paid but such dispositions shall otherwise be subject to any pertinent regulations.
- (4) Notwithstanding subparagraph (3), the Company may obtain sand and gravel needed for its operations under this Agreement from any vacant public land on the forest management area pursuant to the Surface Materials Regulation, subject to the payment by the Company of all required fees and royalties. In no case, however, shall the Company have to pay fees or royalties for in situ right-of-way material located and used where it is found within the right-of-way.
8. (1) It is recognized by the Minister that the Company's use of the forest management area for establishing, growing, harvesting and removing coniferous timber is to be the primary use thereof and that it is to be protected therein in keeping with the principles of sustainable forest management. In keeping with public values and recognizing that certain portions of the forest management area may have other resource values, the Minister reserves all land rights on the forest management area not specifically given hereby, including by way of example, but without limiting the generality of the foregoing:
- (a) the right of others to travel, hunt, fish and otherwise use the said lands for recreational purposes, subject only to any necessary restrictions approved by the Minister for the purpose of prevention of accidents, fire control, protection of wildlife and seasonal protection of roads;
- (b) the right to authorize any person to conduct any work in connection with or incidental to geological or geophysical exploration pursuant to the *Mines and Minerals Act*, or the Exploration Regulations; provided that the Company shall be entitled to reasonable compensation, from the person or company which holds the authorization to conduct the exploration, for any loss or damage suffered by the Company and resulting from such exploration including by way of example but without limitation, for any damage to coniferous timber or forest growth, regeneration, improvements or to any of its operations on the forest management area; and provided further that the Company shall

not be entitled to compensation for damage to coniferous timber or forest growth caused by any such geological or geophysical exploration where the right to cut such timber has been granted to a third party under a timber disposition;

- (c) the right to maintain and enhance forest resource values, including fish and wildlife resources; and
  - (d) the right to authorize trapping and, after consultation with the Company, to authorize domestic stock grazing provided, however, that the growth performance of the coniferous timber is not impaired and the coniferous regeneration will not be damaged by domestic stock grazing to the point where the overall stocking is reduced below the reforestation standard as set out in the Timber Management Regulation and provided the Company's rights to establish, grow, harvest and remove timber is not significantly impaired.
- (2) The Minister also reserves the following rights to the timber on the forest management area:
- (a) the right to issue deciduous timber allocations, licences and permits within the forest management area for the approved deciduous annual allowable cut;
  - (b) the right to manage and reforest deciduous tree species on any lands which may be required to maintain the deciduous timber annual allowable cuts as set out in the approved detailed forest management plan; and
  - (c) the right, after consulting with the Company, to increase the deciduous annual allowable cut as a result of enhanced forest management on the deciduous stands identified in the detailed forest management plan;
- (3) The Minister and the Company agree to provide, each to the other, in confidence such available information as the Minister and the Company may reasonably request concerning the operations on the forest management area which are authorized under timber dispositions. The Minister shall consult with the Company on an ongoing basis as may be required to minimize any conflict between the operations authorized under timber dispositions issued pursuant to subparagraph (2) and the operations of the Company.

## **FOREST MANAGEMENT**

### **A. GENERAL PROVISIONS**

9. On the forest management area the Company shall, in accordance with the approved forest management plan follow sound forestry practices including landscape management based on sound ecological principles in managing the land base for the purpose of achieving and maintaining a perpetual sustained yield of timber from the productive forest land, while not reducing the productivity of the land.
10. (1) Before the Company submits a plan referred to in subparagraphs (3), (4) and (5) to the Minister for his review and approval, the Company shall
- (a) make the necessary arrangements required for and shall conduct public reviews of its proposed forest management plans; and

- (b) provide the opportunity for third parties holding timber quota(s) on the forest management area to participate, as specified in the forest management planning manual, in the formulation of the Company's proposed forest management plans to ensure that the long-term sustainable objectives and principles of forest management are maintained.
- (2) After these reviews with the public and timber disposition holders, the Company shall incorporate in the forest management plan its response to the concerns raised by the public and timber disposition holders respecting the proposed forest management plan and shall submit this plan to the Minister within the time specified in subparagraphs (3), (4) and (5) as the case may be for the Minister's review and approval.
- (3) Not more than twelve months following the commencement date of this Agreement, the Company shall submit for the Minister's approval a preliminary forest management plan. Prior to approval of the preliminary forest management plan, the Company will continue to conduct harvesting of timber in accordance with the Crown's approved forest management unit plans and the Company's approved annual operating plans.
- (4) Not more than five years after the commencement date of this Agreement, the Company shall submit for the Minister's approval a detailed forest management plan, and this plan when approved will replace that plan approved by the Minister under subparagraph (3).
- (5) Not later than the fifteenth anniversary of the commencement date of this Agreement the Company shall submit for the Minister's approval a revised detailed forest management plan, and this revised plan when approved will replace that plan approved under subparagraph (4).
- (6) The Company shall prepare the forest management plans referred to in subparagraphs (3), (4) and (5) in accordance with the forest management planning manual prepared by the Minister, as amended from time to time.
- (7) The management strategies in the detailed forest management plan under subparagraphs (4) and (5) shall
  - (a) provide for the maintenance of the annual allowable cut for both the coniferous and deciduous species subject to the occurrence of natural disasters; and
  - (b) account for both the coniferous and deciduous components of the growing stock in the forest management area, and shall ensure that these components are being replaced through strategies acceptable to the Minister through the approved forest management plans and annual operating plans.
- (8) The Minister may require the Company, after discussing any proposed changes with the Company, to alter any of the methods described in its forest management plans before approving such plans provided the changes are consistent with the forest management planning manual referred to in subparagraph (6).



11. Subject to paragraph 10(3), the Company may not commence or carry on any construction project or any operation on the forest management area until the relevant plans which are required to be submitted pursuant to this Agreement have been submitted by the Company and approved in writing by the Minister. The Company may not digress from the approved plans without the Minister's consent in writing, with the understanding that the Minister shall provide a full explanation whenever consent is withheld.
12. When, in the opinion of the Minister, any plan approved by him under this Agreement becomes obsolete or inadequate, he may, by reasonable notice in writing, require the Company to submit a revised plan for his approval within a specified time, or within any extended period of time he may subsequently allow.
13.
  - (1) The Company shall recommend in its forest management plans for the Minister's approval, areas available for harvesting by holders of timber dispositions.
  - (2) The Minister shall consult with the Company concerning proposed areas, harvest design and methods of harvesting by holders of timber dispositions in the forest management area before designating the areas in which their operation may be carried on.
  - (3) The Company shall, through sustainable forest management planning, integrate and co-ordinate the management of the forest resources with all holders of timber dispositions operating within the forest management area.
  - (4) The Minister shall require third party holders of timber dispositions operating within the forest management area to conduct all harvesting operations in accordance with the Company's approved plans and to refrain from hindering or obstructing the lawful operations of the Company.
14.
  - (1) The Company shall conduct such forest inventories of the forest management area as are necessary to prepare the plans required by this Agreement.
  - (2) The Company shall maintain a reasonably complete and accurate forest inventory collected to Alberta Vegetation Inventory Standards version 2.1 of the forest management area, or as otherwise mutually agreed by the parties, and shall update all depletions and reforestation.
  - (3) The Company shall establish and implement a growth and yield program as part of the detailed forest management plan on lands within the forest management area.
  - (4) The growth and yield program will include the establishment of a system of permanent sample plots which will be used to monitor the results of different silvicultural systems during the term of this Agreement so as to provide accurate information for the preparation of reliable yield tables.
15. All information and data related to the forest management area that has been or will be collected by the Company or the Minister relating to forest inventory, other resource uses, the inventory referred to in paragraph 14(2), growth and yield data, reforestation results, and operational and detailed planning maps shall be made available to the Minister, or the Company, whichever is the case, free of charge upon request and on a timely basis.

16. (1) The Company shall conduct its timber harvesting and reforestation operations in accordance with the approved "Alberta Timber Harvest Planning and Operating Ground Rules" until such time as they are replaced by the established set of ground rules under subparagraphs (2) or (3).
  - (2) Within six months following the approval of the detailed forest management plan under paragraph 10(4), the Minister and the Company will jointly develop a set of ground rules consistent with the detailed forest management plan, for the preparation of operating plans and to guide harvesting and reforestation operations.
  - (3) In the event that a set of ground rules, or a revision to a set of ground rules cannot be established by mutual agreement after good faith negotiations, the Minister may establish or revise a set of ground rules that are consistent with the detailed forest management plan, but only with the approval of the Lieutenant Governor in Council.
  - (4) At the initiative of either party the ground rules shall be reviewed jointly by the Minister and the Company. These ground rules may be altered by mutual agreement of the Minister and the Company.
17. (1) The term of this Agreement shall be divided into four cut control periods each with a duration of five years or as otherwise agreed to by the Minister.
  - (2) If the Company overcuts the periodic allowable cut the Minister shall reduce the annual allowable cut during the subsequent cut control period by an amount equivalent to the entire overcut volume, except to the extent such overcut results from the salvage of dead, damaged, endangered, diseased, or fire killed timber.
  - (3) Where production is lower than the periodic annual cut, the Company may submit a program satisfactory to the Minister making up the undercut volume in the subsequent cut control period or such other period as may be approved by the Minister.
18. (1) The Company shall forthwith upon the commencement date of this Agreement establish a forest management operating year that shall commence and end on dates approved by the Minister.
  - (2) Subject to paragraph 10(3), the Company shall submit to the Minister annual operating plans in accordance with the ground rules referred to in paragraph 16.
  - (3) Each annual operating plan shall be in accordance with the approved forest management plan and include an operating projection showing the proposed harvesting operation intended by the Company. Such operating projection shall be in accordance with the standards and shall cover the period of time specified in the ground rules referred to in paragraph 16.
  - (4) The Minister may approve such plans as are submitted, or may require the Company, after discussing any proposed changes with the Company, to alter any harvesting operations described in the plans, provided that the Minister shall not thereby alter the ground rules and acts promptly so as to avoid delay in the Company's operations.

- (5) When the annual operating plan does not provide for the salvage of dead, damaged, endangered, diseased or decadent or fire killed timber, the Minister may give notice to the Company that he requires provision for its salvage in such plan. The Company shall have thirty days from the date on which such notice is given to it by the Minister within which to amend the plan, or to justify the exclusion of such timber from its plan. If the Company fails or elects not to do either within such period, the Company shall not be deemed to be in default and the Minister may dispose of such timber to any person by a timber disposition not exceeding one year in duration without compensating the Company and the volume of timber so disposed will be charged by the Minister as production against the forest management area. This charge for coniferous timber shall not be greater than the periodic allowable cut.
19. The Company shall use every reasonable effort to purchase roundwood if required by the Company and if offered to the Company at prevailing market prices, provided that the roundwood possesses a standard of quality suitable in the opinion of the Company for use in the Sawmill.
20. The Company shall utilize all merchantable timber cut in road construction and other incidental operations of the Company unless otherwise permitted in writing by the Minister.
21. The Company shall not hinder or obstruct the lawful timber operations of licensees and permittees.
22.
  - (1) It is recognized that during their operations, holders of timber dispositions may cause some incidental damage to timber. No claim shall be made by the Company against any holder of a timber disposition or the Minister for reasonably unavoidable incidental damage to timber.
  - (2) The Minister shall ensure that all timber dispositions issued on the forest management area after the commencement date of this Agreement shall include a provision preventing a claim against the Company for reasonably unavoidable incidental damage to timber.

**B. REFORESTATION**

23.
  - (1) The Company shall reforest at its own expense all lands cut over by the Company under this Agreement to the required reforestation standard and shall describe its reforestation program in its forest management plans and annual operating plans.
  - (2) The Company shall be responsible for reforesting those lands cut over by the Company prior to the commencement date of this Agreement that comprise part of the forest management area, the reforestation of which was the responsibility of the Company and that have not been recognized by the Minister as being satisfactorily regenerated and shall describe its reforestation program in its forest management plans and annual operating plans.
  - (3) In this Agreement the required reforestation standard means the reforestation standard under the Timber Management Regulation.
24.
  - (1) As part of its operations under this Agreement the Company shall, at its sole expense, furnish all of the seedling trees and propagules required for its reforestation needs.

- (2) Seed, seedling trees and propagules used for reforestation programs under this Agreement shall be produced in accordance with the rules established by the Minister governing the source and type of tree seed and species used to reforest public land.
25. (1) The Company and the Minister may devise a program designed to carry out silviculture programs on lands in the forest management area capable of supporting tree growth on which the timber was cut over by individuals other than quota holders or the Company or destroyed at any time by natural agencies, such as fire or disease, and which has failed to meet the required reforestation standard.
- (2) The Company shall be solely responsible for reforesting to the required reforestation standard all productive and potentially productive lands burned by fire within the forest management area, when the fire has been caused by the Company, its employees, agents or contractors.
26. The Company may devise and implement enhanced forest management practices beyond those required under this Agreement. The Company and the Minister may enter into an agreement which will define the programs and conditions that, in the Minister's opinion, will establish a sustainable increase in the allowable cut approved by the Minister in the Company's management plans submitted under paragraph 10.
27. (1) Where the Company implements the enhanced forest management program under paragraph 26, and where the Minister and the Company agree on the amount of additional allowable cut which will result from the Company's silvicultural efforts over and above those required under this Agreement and the *Forests Act*, then such additional allowable cut shall be offered by the Minister to the Company free of timber dues provided the Minister has been duly authorized to do so by a regulation passed under section 4 of the *Forests Act*.
- (2) The additional allowable cut resulting from the Company's enhanced forest management efforts will only be offered to the Company after the Company has fully utilized the annual allowable cut approved in the Company's management plans.

### **C. FOREST PROTECTION**

28. (1) The Minister agrees to provide and maintain an organization of people and equipment necessary for the protection of the forest from and suppression of forest fires on the forest management area and, except as herein otherwise provided, to pay the cost of fighting any forest fire that originates on the forest management area on the understanding that the Minister will not be liable for damages to the Company resulting from a failure to prevent, control or suppress any fire.
- (2) Notwithstanding subparagraph (1), the Company shall pay the cost of suppressing any forest fire that originates on the forest management area if the fire is caused by or arises out of any of the operations or activities conducted on the forest management area by the Company, its employees, agents or contractors; provided, however, that in no event shall the liability of the Company exceed the liability provided for in a separate Fire Control Agreement which may be negotiated and entered into by the Minister with the Company. Until such time as a Fire Control Agreement has been entered into, the Company agrees to have on hand in good working order such fire fighting equipment and shall train such employees in fire suppression as specified by

the Minister. If the cause of any fire is disputed by the Company, the dispute shall be resolved by means of civil suit in the Courts of Alberta.

- (3) Notwithstanding anything contained in this Agreement, the Company shall not be liable for loss of or damage to Crown timber by fire that is caused by or arises out of any of the operations or activities conducted on the forest management area by the Company, its employees, agents or contractors.
- (4) In the event of an occurrence of insect damage of epidemic nature to forest growth or a disease epidemic affecting forest growth on the forest management area the parties hereto will cooperate in suppressing the epidemic.

#### **RECORDS AND SCALING**

29. (1) All scaling and measuring of timber weights and volumes shall be conducted in accordance with the Timber Regulation, the Scaling Regulation and the published instructions of the Department.
- (2) The Company shall maintain in the form and in the manner approved by the Minister complete and accurate records of the operations it conducts on the forest management area.
- (3) The Minister, or any person authorized by the Minister, may inspect the records maintained by the Company pursuant to subparagraph (2).
30. (1) Unless otherwise prescribed in the Timber Management Regulation, within thirty days of the termination of every calendar quarter, the Company shall submit in confidence to the Minister in writing, in a form prescribed by the Minister, a return reporting
  - (a) the volume of timber cut by and for the Company;
  - (b) the volume of timber cut or destroyed by others for which the Company is entitled to compensation under this Agreement;
  - (c) the volumes of primary timber products manufactured and sold by and for the Company from the Sawmill; and
  - (d) the volume of timber and primary timber products purchased for use in the Sawmill, and the land from which the timber was cut.
- (2) The Company shall remit to the Minister with its returns the amount of all dues payable for the volume of timber shown on such returns.

#### **CHARGES AND DUES**

31. (1) Once a year during the term of this Agreement, the Company shall pay to the Minister on or before a date specified by the Minister a holding and forest protection charge.
- (2) Initially, on the commencement date of this Agreement the charges in subparagraph (1) will be \$0.81 per cubic metre of the annual allowable cut approved under paragraph 10.

- (3) Subsequent holding charges and forest protection charges shall be adjusted annually on the anniversary of the commencement date of this Agreement using the Annual Implicit Price Index for government current expenditure in goods and service, as published by Statistics Canada, in the following formula:

$$\text{Charge for Year of Payment} = \text{Charge for Previous Year} \times \frac{\text{Index for Year Prior to Year of Payment}}{\text{Index for Second Year Prior to Year of Payment}}$$

Example:

$$2003 \text{ Holding and Protection Charge} = \$0.81 \times \frac{2002 \text{ Index}}{2001 \text{ Index}}$$

In the event that the Annual Implicit Price Index is no longer published or in the event of a change in the method used to calculate the Index, the Minister and the Company shall mutually and reasonably agree on a comparable published index to be used in the above formula.

- (4) Notwithstanding subparagraphs (2) and (3),
- (a) the holding and forest protection charges otherwise payable by the Company shall be reduced by the eligible expenditures actually made by the Company in carrying out the approved forest protection plans submitted under subparagraph (6).
  - (b) eligible expenditures can only be used to reduce the holding and protection charges otherwise payable in the year following the year the expenditures were made and then only to the limit of those charges.
- (5) For the purposes of subparagraph (4), expenditures shall not include costs of suppressing forest fires or epidemics of insects or disease.
- (6) The Company shall submit annually a forest protection plan for the Minister's approval.
- (7) The forest protection plan shall include a description and an estimated cost for those proposed expenditures the Company wishes to claim under subparagraph (4). Within thirty (30) days of submission of the forest protection plan, the Minister shall indicate those proposed expenditures that are eligible to reduce the holding and forest protection charges otherwise payable by the Company.
- (8) The Company shall annually submit an audited annual financial report detailing how much was spent by the Company in implementing the plans referred to in subparagraph (6). The audited financial reports shall be prepared by an independent, qualified auditor and shall be prepared in accordance with the Canadian Institute of Chartered Accountants Handbook.
- (9) The Company shall maintain and retain for three years such records of the expenditures claimed under subparagraph (4) as would allow a proper audit of these expenditures and shall make available to the Crown, including but not limited to Crown appointed auditors, the existing records in whatever form relating to those expenditures during normal business hours.

32. (1) For all timber on the forest management area cut by or for the Company or for which the Company is entitled to compensation, the Company shall pay to the Minister timber dues at the rates established under the Timber Management Regulation.
- (2) The Company shall maintain a program to enhance the management activities and level of understanding of the forest resources and forest products within the forest management area. The minimum annual funding will be \$1.00 per cubic metre based on all coniferous timber cut by or for the Company from the forest management area.
- (3) The Company shall annually, and as otherwise requested by the Minister, provide a report that details the activities of the program referred to in subparagraph (2).

#### **FACILITY OPERATION**

33. The Company will notify the Minister, in writing, of any intended major reduction in production levels of the Sawmill. Such notification will be submitted to the Minister at least six weeks prior to the intended reduction taking effect.
34. If, at any time the Sawmill ceases to be in production and operation for a period of eighteen consecutive months, the Company shall have no right to and shall not harvest coniferous timber on the forest management area. The Minister shall have the right to issue coniferous timber dispositions to third parties on the forest management area for up to 100% of the approved coniferous annual allowable cut until such time as the Company advises the Minister in writing of its intentions to resume production and operation of the Sawmill. The volume of timber harvested under timber dispositions issued to third parties under this paragraph will be charged as production under this Agreement.
35. (1) If, at any time, the Sawmill ceases to be in production and operation, excluding maintenance shutdowns, for a cumulative, but not necessarily consecutive, period of thirty-six months, the Minister shall have the right to cancel this Agreement.
- (2) Notwithstanding subparagraph (1), if the Company submits a proposal for a forest industry project, including an implementation timetable, as a replacement for the Sawmill, which proposal is acceptable to the Minister, the Minister shall delay exercising his right to cancel this Agreement.
- (3) If the Company has submitted a proposal for a forest industry project acceptable to the Minister and, in the opinion of the Minister, the Company is not carrying out the proposal in accordance with its terms the Minister may cancel this Agreement.

#### **GENERAL PROVISIONS**

36. (1) If the Company at any time is in default under any of the covenants, terms, conditions, provisions, agreements and stipulations in this Agreement, the Minister may give notice to the Company setting out the default complained of and requiring the Company to remedy the default within six months of the giving of notice.
- (2) The Minister may from time to time extend the period during which the Company is required to remedy any default complained of in a notice given pursuant to subparagraph (1).

37. The Minister shall have the right to have the Company perform all the covenants, terms, conditions, stipulations, provisions and agreements and obligations upon it as contained in this entire Agreement or to sue the Company for damages for any breach or breaches thereof and the Minister shall also have the right to cancel this Agreement as set forth in paragraph 39 provided the remedies available to the Minister for default by the Company under paragraphs 34 and 35 shall be limited to those set out in paragraphs 34 and 35.
38. When any default or delay by the Company in the performance or observance of any of the terms, conditions, provisions, agreements, covenants and stipulations of this Agreement is occasioned in whole or in part through
- (a) industrial disputes;
  - (b) governmental review or judicial proceedings respecting the possible environmental impact of the Sawmill or forest management impact of the woodlands operations; or
  - (c) interruption which is not the result of any wilful or negligent act or omission by the Company, such as power failure, fire, sabotage, tempest, war or acts of God

and not avoidable by reasonable effort or foresight, the Company shall not be deemed in default under this Agreement and the time for performance or observance of such term, condition, provision, agreement, covenant or stipulation shall be extended by such reasonable period of time as the Minister may specify in writing to the Company.

39. (1) Except as otherwise provided in paragraph 35 the Minister may, by giving the Company ninety (90) days notice in writing, cancel this Agreement when:
- (a) any goods or chattels of the Company, which are located at the Sawmill and which constitute a material part of the Company's assets located thereat, and which are liable to distress, are lawfully seized or taken in execution by a creditor of the Company, and the Company has failed to take any legal action to contest the same within ninety (90) days after such seizure or taking; or
  - (b) the Company makes any general assignment for the benefit of its creditors or an assignment in bankruptcy or takes the benefit of any Act in force for bankrupt or insolvent debtors; or
  - (c) the Company fails from time to time to observe or perform any of the covenants, stipulations, terms, conditions, provisions and agreements required to be observed or performed by the Company under this Agreement, and having been given notice of such failure under paragraph 36 of this Agreement, fails to remedy such failure within the time allowed by paragraph 36 for so doing, or any extension thereof given by the Minister.
- (2) Subparagraphs (1) (a) and (b) do not apply if a trustee for the holders or receiver managers or the holders themselves of bonds, debentures, or other securities of the Company exercises any rights or remedies contained in any deed of trust or mortgage or other agreement under which such bonds, debentures or other securities are issued or secured, including but without restricting the generality of the foregoing, the taking of possession by the trustee, receiver managers or the holders themselves of the Company's



properties and assets and the operation or disposition thereof for the benefit of the holders of the Company's bonds, debentures or other securities.

40. The Minister does not guarantee any quality or quantity of timber on the forest management area.
41. No implied contract of any kind by or on behalf of the Minister shall arise or be construed from anything contained in this Agreement and the only rights, powers and privileges granted to the Company are those contained in this Agreement.
42. The Minister and the Company agree that the lines on the map shown in Appendix "A" hereunto annexed are intended, where those lines outline areas that are not surveyed, to be the survey lines of the townships, sections, half sections, legal subdivisions or natural features, as the case may be, that would exist if such areas were surveyed under the system of township surveys prescribed by the *Surveys Act* of Alberta.
43. The Company shall comply with and observe all the provisions and requirements of all Acts of the Province of Alberta and the regulations thereunder in force from time to time that apply to the Company or to this Agreement either specially or generally by express wording or by implication.
44. The Company shall during the term of this Agreement maintain an office in the Province of Alberta and maintain a registration under the *Business Corporations Act* and its regulations.
45.
  - (1) Excepting a dispute arising under paragraph 28(2), where any dispute arises between the parties to this Agreement concerning the application or interpretation of this Agreement the dispute may be referred to arbitration pursuant to the *Arbitration Act* but only upon the mutual agreement of both parties.
  - (2) Where both parties do not agree to refer a dispute concerning this Agreement to arbitration as provided in subparagraph (1), the dispute shall be resolved by means of civil action including, but not limited to, judicial review before the Courts of the Province of Alberta.
46.
  - (1) The Company shall not assign this Agreement or any of the rights granted to it by this Agreement without the consent of the Minister in writing and such consent may in his sole discretion be withheld. Where the Minister refuses consent to an assignment, he shall advise the Company in writing of his reasons for so refusing.
  - (2) Subparagraph (1) does not apply to:
    - (a) the employment of one or more contractors in the normal conduct of its operations; or
    - (b) an assignment or transfer of this Agreement by way of mortgage or charge or the grant of a security interest in this Agreement to lenders to or trustees for lenders to the Company;
    - (c) an assignment or transfer to a person, firm or corporation upon the sale or other disposition by or on behalf of lenders to or trustees for lenders referred to in subparagraph (2)(b) in the course of realization or enforcement of security against the mill facilities, provided that any such assignment, transfer or other disposition shall not be made

without the consent of the Minister in writing, such consent not to be unreasonably withheld.

47. Any waiver by the Minister of the strict performance by the Company of its covenants or of any term, condition, stipulation, agreement or provision under this Agreement is not binding upon the Minister unless such waiver is expressed in writing under the authority of the Minister, and any such waiver or any extension of time granted by the Minister hereunder shall not abrogate such or any covenant, term, condition, stipulation, agreement or provision herein or constitute a waiver or extension of time as to any subsequent breach of the same or any other covenant, term, condition, stipulation, agreement or provision herein.
48. The Company covenants and agrees to observe, perform and keep all covenants, terms, conditions, stipulations, agreements and provisions herein on its part to be observed, performed and kept and time shall be and remain of the essence thereof and notwithstanding any binding waiver given by the Minister as referred to in paragraph 47 or any extensions of time given by the Minister under this Agreement that thereby may affect the time for performing any particular act, covenant, term, condition, stipulation, agreement or provision of this Agreement herein, time shall remain of the essence pertaining to all subsequent performance by the Company of any and all acts, covenants, terms, conditions, stipulations, agreements and provisions herein contained and to this entire Agreement.
49.
  - (1) The Company assumes liability for and shall pay all claims of the Minister for all damages to any real or personal property (other than timber) of the Crown caused by the Company, its servants, agents, workmen and contractors, whether or not the damage so caused is due to the negligence of the Company, its servants, agents, workmen and contractors, as the case may be, provided that such liability under this subparagraph shall not include economic loss or incidental and consequential loss and damage.
  - (2) Subparagraph (1) shall not restrict, in any manner, the ability of the Minister to pursue the Company under the common law for economic loss or incidental and consequential loss and damage, which liability may be resolved by means of arbitration pursuant to the Arbitration Act with the mutual agreement of both parties, or failing such agreement, by civil action before the courts of the Province of Alberta.
50. The Company agrees to hold the Minister harmless against any and all third party claims, demands or actions for which the Company is legally responsible, including those arising out of negligence, wilful harm, or crimes by the Company or the Company's employees or agents.
51. The Company shall submit to the Minister when required any information or documents the Minister may reasonably request in respect of matters relating to this Agreement for the purpose of verifying the Company's continued compliance with the terms of this Agreement.
52. Any notice required to be given under this Agreement shall be deemed to be well and sufficiently given if delivered to the address set out below or if mailed at any government post office by prepaid registered mail addressed as follows:

- (a) to the Company:  
Manning Diversified Forest Products Ltd.  
Bag 1600  
Manning, Alberta  
T0H 2M0
  
- (b) to the Minister:  
Minister of Sustainable Resource Development  
Legislature Building  
Edmonton, Alberta  
T5K 2B7

or to such other address any party may from time to time inform the other party in writing, and any such notice shall be deemed to have been received on the fourth business day after the mailing thereof, or if delivered, when delivered; provided that if mailed should there be between the time of mailing and the actual receipt of the notice a mail strike, slow down or other labour dispute which might affect the delivery of such notice then such notice shall only be effective if and when actually delivered.

- 53. This Agreement is made subject to its approval by the Lieutenant Governor in Council.
  
- 54.
  - (1) The Company agrees that the Minister shall amend Coniferous Timber Quota CTQP120001 upon the approval of and in a manner consistent with the Company's forest management plan under paragraph 10(3) of this Agreement.
  
  - (2) In the event that this Agreement is cancelled for any reason, the Minister shall grant to the Company for the sum of \$1.00, a coniferous timber quota for the volume of coniferous timber that becomes available as a result of the cancellation of this Agreement.
  
  - (3) The obligation of the Minister to grant a coniferous timber quota under this Agreement shall survive the cancellation of this Agreement.
  
- 55. Where any information, data or documents are provided to the Crown in confidence under this Agreement, that confidentiality is subject to any restriction on disclosure or obligation to disclose imposed on the Crown by law.
  
- 56. This Agreement inures to the benefit of and is binding upon the Crown and Her assigns, and the Company and its successors and assigns if approved by the Minister in accordance with the provisions of this Agreement.

57. This Agreement shall be construed as having been made in the Province of Alberta and the laws of the Province of Alberta shall be applied in the event of any action or arbitration mutually agreed to, respecting any dispute arising from this Agreement, its formulation, interpretation, and each and every other aspect pertaining to or resulting from its entire contents.

**IN WITNESS WHEREOF** the party of the first part executes this Agreement under the hand of the Minister subscribed hereunder and the party of the second part executes this Agreement by subscribing hereunder the signatures of its duly authorized corporate officers at Edmonton, this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

Her Majesty the Queen  
in Right of Alberta

*Original signed*

\_\_\_\_\_  
Witness

*Original signed by the Minister*

\_\_\_\_\_  
Minister of Sustainable Resource  
Development

**Manning Diversified Forest  
Products Ltd.**

*Original signed*

\_\_\_\_\_  
Witness

*Original signed by the  
Company representative*  
Per: \_\_\_\_\_

*Original signed*

\_\_\_\_\_  
Witness

*Original signed by the  
Company representative*  
Per: \_\_\_\_\_

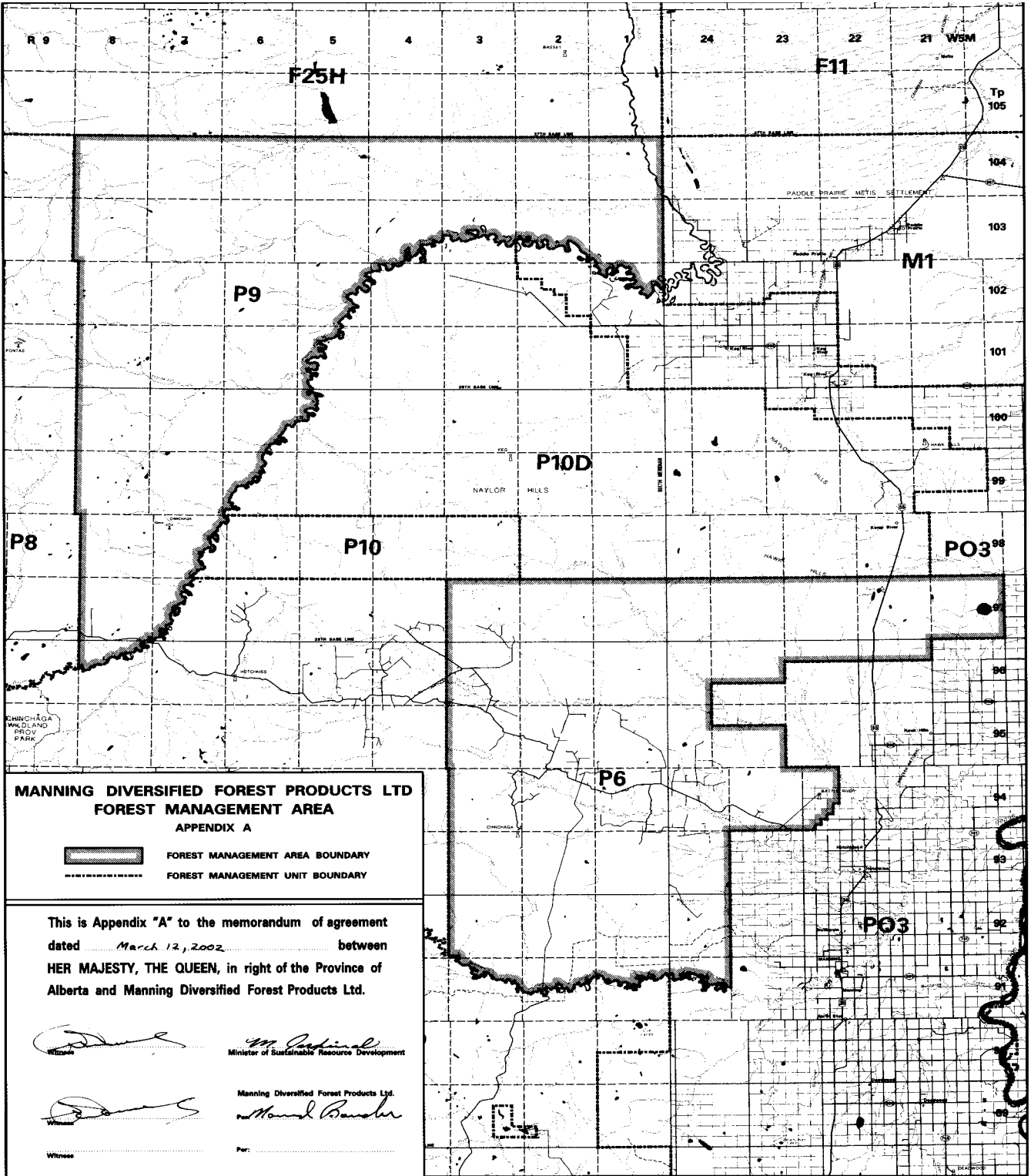
*Original signed*

\_\_\_\_\_  
Witness

*Original signed by the  
Company representative*  
Per: \_\_\_\_\_

**APPENDIX "A"**

Forest Management Area



# MANNING DIVERSIFIED FOREST PRODUCTS LTD.

## APPENDIX "B"

### PLANNING CRITERIA

The coniferous and deciduous timber growing on the forest management area shall be managed, harvested and reforested on a perpetual sustained yield basis in accordance with the provisions of this Agreement including the following guidelines:

1. Timber stands in the forest management area shall be classified in accordance with the forest timber type classification as designated on maps produced using Alberta Vegetation Inventory Standards version 2.1 or such other criteria as may be approved by the Minister.
2. All stands in the forest management area will be managed and harvested in accordance with the following provisions:
  - (a) All pure coniferous and mixedwood stands (C, CD, and DC) and pure deciduous stands with established coniferous understorey identified on timber type maps produced under paragraph 1 of this Appendix shall be managed primarily for coniferous production. The detailed forest management plan shall provide for the sustainability of deciduous timber harvested from those coniferous stands managed primarily for coniferous production.
  - (b) All pure deciduous stands (D) shall be managed primarily for deciduous production. The detailed forest management plan shall provide for the sustainability of coniferous timber harvested from those deciduous stands managed primarily for deciduous production.
  - (c) In reference to subparagraphs (a) and (b) above, the detailed forest management plan will provide for the maintenance of mixedwood stand structures within the forest management area in a manner that recognizes and protects biological diversity. The detailed forest management plan will provide for the monitoring of stand composition changes over time and for the implementation of adaptive management strategies to ensure sustainability of supply of both deciduous and coniferous timber.
3. Other companies to be designated by the Minister (each hereinafter referred to as the "Deciduous Company") shall have the right to harvest deciduous timber in the forest management area by means of deciduous timber dispositions. The Deciduous Company shall have no rights to the coniferous timber on the forest management area.
4. So as to accommodate the full utilization of the timber resource growing on the forest management area and the integration of deciduous and coniferous harvesting
  - (a) harvesting and removal of coniferous timber by the Deciduous Company shall be subject to the approval of their annual operating plan submitted pursuant to its active deciduous timber disposition(s), and
  - (b) harvesting and removal of deciduous timber by the Company shall be subject to the approval of their annual operating plan submitted pursuant to this Agreement.

5.
  - (1) Unless otherwise agreed to by the Minister, all coniferous timber harvested by the Deciduous Company shall be felled, skidded, decked and made available in accordance with mutually acceptable business arrangements entered into between the Company and the Deciduous Company.
  - (2) All D and D(C) stands shall be logged first by the Deciduous Company, who will fall, skid and deck all merchantable coniferous timber and make it available to the Company in accordance with the business arrangements referred to in subparagraph (1). Timber dues are payable by the Company on all coniferous timber.
  - (3) All C, CD, and C(D) stands shall be logged first by the Company, who will fall, skid and deck all merchantable deciduous timber and make it available to the Deciduous Company in accordance with the business arrangements referred to in subparagraph (1). Timber dues are payable by the Deciduous Company on all deciduous timber.
  - (4) All DC stands shall be managed and harvested on a flexible basis to be determined by the forest management plans prepared by the Company under paragraph 10 of this Agreement and as approved by the Minister. In the event that the Deciduous Company will operate in DC stands, the Deciduous Company's logging plans will be developed in consultation with the Company. Annual operating plans submitted by the Deciduous Company will not be approved by the Minister until conflicts between the Deciduous Company and the Company have been resolved to the satisfaction of the Minister.
6. Both the Company and the Deciduous Company shall be compensated for the cost of felling, skidding and decking of timber by the other party in either of two ways:
  - (a) as mutually agreed between the Company and the Deciduous Company, or, failing such agreement,
  - (b) as determined by the Minister, either to require the parties to exchange equivalent volumes of timber or to require the parties to make monetary payment to each other equal to the contract cost for felling, skidding and decking the timber.
7. A party shall be required to harvest and deck all timber to the reasonable specifications of the party receiving the timber.
8. Unless otherwise agreed to by the Minister, the Company shall have no rights in or to any deciduous timber harvested by the Company on the forest management area.
9. Timber dues are payable by the Deciduous Company on all deciduous timber regardless of which party conducts the harvesting or hauling operations.
10. The Minister may allow the Deciduous Company to harvest merchantable deciduous trees from stands designated in the approved annual operating plan even if they contain a coniferous understorey, provided, that damage to the coniferous understorey is minimized through harvesting techniques. Where the Minister, after consulting with the Company, determines that appreciable damage is being done to the coniferous understorey, the Minister shall order the cessation of timber harvesting operations being carried out by the Deciduous Company in those stands.
11. All coniferous timber cut on the forest management area shall be considered as production against the forest management area.