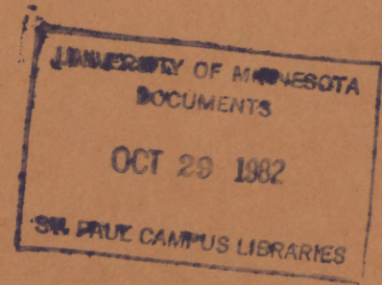


MN 2000 SR-96



Special Report 96-1982



Employer Obligations in the Logging Industry

A. Scott Reed
Daniel H. Mundt
Gregory L. Thompson

Agricultural Extension Service
University of Minnesota

CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. GENERAL BACKGROUND OF PROBLEM	2
III. SPECIFIC LEGISLATIVE AND COURT PRECEDENT EMPLOYMENT GUIDELINES	3
A. Common Law Standards and IRS Factors	3
B. Workers' Compensation	5
C. National Labor Relations Act	6
D. Unemployment Compensation	7
E. Social Security Taxes	9
F. Income Tax	9
IV. CONCLUSION	10
V. APPENDICES	12
Appendix A - Service Contract	12
Appendix B - Timber Sale Contract	21
Appendix C - Purchase Contract	28
Appendix D - Trucking Contract	35
ADDITIONAL REFERENCES	43

ACKNOWLEDGMENTS

The following material has been prepared in response to a need in the logging industry.

When one considers the complexity of the problems involved and the various ways individuals approach these problems, it becomes extremely difficult to forecast what uniform approach is best.

The attempt here has been to give some general background and information on the law, and then to develop four separate contracts for practical use. It is intended that those contracts should be reviewed and used with care,

depending on the particular situation, and should not simply be adopted without considering the impacts of the agreements and the facts being dealt with. It is especially critical that those who use the contracts follow the contracts' terms, because these agreements will be of no effect if their provisions are not adhered to in practice.

Special credit and recognition is due Russ Allen, executive secretary of the Minnesota Timber Producers Association; Jack Cedergren and Robert Hagman. These individuals have shared in the review of the materials.

EMPLOYER OBLIGATIONS IN THE LOGGING INDUSTRY

A. Scott Reed, Daniel H. Mundt, and Gregory L. Thompson*

I. INTRODUCTION

The question of whether an individual is considered an independent contractor or an employee for purposes of income tax, workers' compensation insurance, unemployment compensation taxes, social security taxes, and labor relations matters continues to plague the logging industry. This confusion is highly understandable, as the courts have never really established a hard line test to be used in resolving all such disputes.

Many articles and other printed information have been published in efforts to clarify. Much of this information, however, has been published piecemeal with the discussion limited solely to either income tax, workers' compensation, unemployment compensation, social security, or labor matters. This piecemeal information from a variety of sources has frequently served to further confuse.

This publication is an effort to tie the areas of income tax, workers' compensation, unemployment compensation, social security, and labor relations together for purposes of setting out the standards that a court might use in each situation in determining whether an individual is actually an employee or an independent contractor. This focus will consider the consistent standards that the courts have used in determining who is an independent contractor and who is an employee for each of the situations listed. The focus naturally, will be on our prognosis of what the Minnesota Supreme Court would use as a test in each of the situations.

The objective of this publication is to establish a framework so each company, dealer, or producer can have an idea of exactly what obligation is owed and where the liability will rest in the various described situations. It should be emphasized that although the legal guidelines and standards set out here are relevant to any situation involving a company, dealer, or producer, this publication and the attached contracts are aimed particularly at the individual loggers who need to be informed about their legal obligations as potential employers.

The ideas, theories, and law set forth here should be evaluated carefully and used in conjunction with the attached independent contractor agreements. We obviously cannot guarantee that the independent contractor agreements will protect a contracting company in all instances, especially with respect to workers' compensation, but if used on a regular basis, we believe that the agreements will permit the parties to understand exactly

*A. Scott Reed is extension forestry specialist, University of Minnesota, Cloquet, MN; Daniel H. Mundt and Gregory L. Thompson are attorneys at law, Mundt and Hall Law Offices, Duluth, MN.

what their responsibilities and obligations are under the law as employers. We specifically refer to workers' compensation, because as you will see, the standards employed by the courts appear to be different for each of the situations.

II. GENERAL BACKGROUND OF PROBLEM

The federal government and the states have passed legislation designed to protect workers and to provide for financial benefits if they become disabled, unemployed, or retired. The responsibility for compliance with these laws is placed on the employer. The obvious question then is, who is considered an employer, or who is an employee?

For various reasons, the problem of who is considered an employer or an employee seems to have been magnified in the forest industry. The problem arises because of different contractual arrangements made between the companies, dealers, and the producers in obtaining timber products. The consistent inquiry is when is a producer or other individual who has sub-contracted to harvest timber considered an independent contractor and in what situations would that individual be considered an employee?

The question is a significant one, as the companies and dealers have a large financial stake in the Internal Revenue Service's (IRS) response to that question. The situation requires special attention since the frequency of audits by IRS agents has increased over the last five years; moreover, the audits seem to be increasingly focused on the forest industry. The agent may investigate the situation by examining the books and records of the company, dealer, or producer and may also personally interview suppliers and contractors about that relationship.

Should the agent determine that a company, dealer, or producer is legally considered the employer of those presumed to be employees of a subcontractor, the agent may make an assessment for one or more years. Some assessments have been for as many as ten years and have ranged from a low of \$3,000 to a high of \$750,000. The assessment occurs because the IRS claims that the organization was an employer, that the persons doing the work were employees, not independent contractors, nor employees of contractors, and that no income tax was paid on these employees. Therefore, the employer is liable since there was no withholding.

So, the timber industry's need for protection and compliance with the law is significant. The attached independent contractor agreements will be a step toward insuring protection for the logger and compliance with the federal and state laws designed to protect employees.

The timber industry will also benefit by obtaining an improved working knowledge of the law relative to workers' compensation, labor relations, unemployment compensation, and social security on the issue of Independent Contractor vs. Employee Status. The underlying question is who is an independent contractor and who is an employee for purposes of income tax, workers' compensation, unemployment compensation, labor law, and social security?

III. SPECIFIC LEGISLATIVE AND COURT PRECEDENT EMPLOYMENT GUIDELINES

What follows is an analysis of the legislative and court guidelines in the areas of workers' compensation, labor relations, unemployment compensation, income tax, and social security in determining the question of Independent Contractor vs. Employee. This analysis contains a review of the common law tests and IRS standards. The analysis continues with a comparison and contrast of the different standards and tests used by the legislatures and courts for the areas just listed. Because of the different standards and tests that have been used by the courts and legislatures, it may be possible that an individual who performs services will be considered an employee in one instance and an independent contractor in another.

A. Common Law Standards and IRS Factors

Traditionally, courts have used a general standard in determining whether an individual is an independent contractor or an employee. The test most frequently used by courts is that an individual will be considered an employee if the person for whom the individual performs such services has the right to exercise control over the performance of such services. The key here is that even though no control is exercised over the performance of an individual's services, the individual can still be considered an employee if the person for whom that individual performs such services has the right to exercise control over the performance of such services.

It is important to note that the wording of the independent contractor agreements may not assist you, if in fact the individual who is performing services for you is not free from your control. In this situation, despite the specific language in the contract, the individual for whom the services are performed will be considered the employer.

This general "right to control" test has been supplemented by 20 different factors used by the IRS and other government agencies to determine whether an individual is an employee or an independent contractor. The factors are listed mainly for your information so you can be aware of what a court may examine in determining this question. However, not all of these factors need be used, and in fact the different areas with which we are concerned seem to require the use of standards and tests different from the 20 factor list developed from the common law and compiled by the IRS.

No single factor, or group of factors, is necessarily conclusive, and the weight to be given to each factor is not constant. These 20 factors appear only in the official guidebook for IRS field agents--they are not the law. A parenthetical explanation is included after those factors which require further explanation.

The following are the 20 factors: (service contractor is the same as independent contractor for this discussion)

1. Instructions (given to the service contractor by the contracting company)
2. Training (provided by the contracting company)

3. Integration (extent to which the services in question are an integral part of the contracting company's business)
4. Services Rendered Personally (as opposed to the service contractor's right to delegate the work)
5. Hiring, Firing, Supervising, and Paying Assistants
6. Continuing Relationship (permanency of the relationship with a service contractor)
7. Set Hours Of Work
8. Full-time Required (does service contractor devote full time to business of contracting company?)
9. Doing Work On Employer's Premises
10. Order Or Sequence Set (scheduling of work)
11. Oral Or Written Reports (to the contracting company by the service contractor during performance of services)
12. Payment By The Hour, Week, Or Month (payment on the basis of time rather than by job)
13. Payment Of Business And/Or Travel Expense (by service contractor rather than contracting company)
14. Furnishing Of Tools And Materials (by the service contractor)
15. Significant Investment (in tools or machinery by the service contractor)
16. Realization Of Profit Or Loss (by the service contractor)
17. Working For More Than One Firm At A Time (service contractor)
18. Making Service Available To General Public (service contractor)
19. Right To Discharge (service contractor or employees)
20. Right To Terminate (service contractor's contractual obligation to complete the job)

It should be noted that courts are not bound by these criteria. Moreover, courts have used some of these factors as evidence that an individual performing services was actually an independent contractor rather than an employee. For instance, evidence of a continuing relationship with a contracting party may only show that an independent contractor is successful in this occupation. This may reflect the contractor's independent status. Therefore, these factors promulgated by the IRS should be used with care, as the courts will be more prone to use state statutory law and common law standards to resolve the independent contractor vs. employee issue.

B. Workers' Compensation

The enactment of legislation by the legislatures and decisions handed down by the courts as a rule tend to be more strict in the area of workers' compensation about determining who is an employee as opposed to the areas of unemployment compensation and social security. The reasoning behind these stricter rules appears to be the tremendous problems that the state has experienced in the areas of workers' compensation, along with the tremendous costs involved in carrying such insurance and also the tremendous disabilities that befall workers as a result of serious employment injuries. This reasoning is supplemented by the fact that workers' compensation insurance is generally viewed by the states as social welfare protection for workers rather than as a revenue measure.

For these reasons, Minnesota, along with 40 other states has adopted a "contractor-under" statute. This statute imposes compensation liability on the general contractor for the employees of subcontractors under the general contractor. So, the primary test in Minnesota is statutory. Under this test (set out as Minnesota Statute Section 176.215) whenever a subcontractor who may be a sole proprietor or in a partnership (without employees) not required to have workers' compensation insurance fails to cover himself, liability for such insurance is imposed on the first party going up the chain who has such coverage. This is equally applicable to a proprietor who covers the employees but not the proprietor. These situations emphasize the importance of ensuring that those you contract with have workers' compensation coverage, and that the parties set out their relationship in a contract.

For example, should a company contract with a dealer to provide the company with pulpwood, and that dealer subsequently subcontracts with a producer to provide that pulpwood, and the producer is a sole proprietor who does not carry workers' compensation insurance, then should the sole proprietor (without employees) be injured while harvesting that pulpwood, the dealer may be held statutorily liable.

There is also potential exposure to a landowner who sells stumpage to a producer who is subsequently injured while harvesting the timber. The potential exposure under the contractor-under statute exists because the owner may be considered by a court to be the general contractor of the producer.

The purpose of this contractor-under statute is to protect employees of uninsured subcontractors by imposing ultimate liability on the presumably responsible principal contractor, who has the power, in choosing subcontractors to insist on compensation insurance protection for the subcontractor's workers. Since Minnesota is one of the states that does permit sole proprietors or partners to cover themselves and others with workers' compensation insurance, obviously, those who contract with them may want to investigate whether or not the sole proprietor or partner has workers' compensation coverage.

The danger with the workers' compensation laws relative to independent contractor-employee status is that liability could be imposed on an individual under the statute whether that individual had a right to control the services performed or not. In these contractor-under statutes, the

courts will look to see whether the subcontracted work is part of the business of the statutory employer. Since dealers frequently find themselves dealing with producers who regularly cut and haul logs or pulpwood, the dealer could be considered the statutory employer of the producer who furnishes materials or services related to the product or service provided by the principal employer. To enhance the possibility that a party performing services is in fact an independent contractor, it is important to execute a contract and follow it.

The related problem concerning Independent Contractor v. Employee under the workers' compensation laws is that if an injured employee cannot find a liable employer under the statute, then that person could still maintain that the individual for whom services were performed had a right to control the performance of the services. So, for purposes of liability of an employer under workers' compensation laws, the courts may look to the Minnesota Statutes and may also impose liability under the common law "right to control test." The court, of course, may also look at any of the other 20 factors previously enumerated in imposing liability for the workers' compensation insurance. It is apparent that the courts and legislatures are making an effort to strictly construe the statutes and the case law to find liability in workers' compensation situation as a means of social welfare protection for workers.

If you are a sole proprietor or partnership, it may ultimately pay to cover yourself and your potential employees with workers' compensation insurance even though the law does not require it. You who consider yourselves sole proprietors and so not required to take out workers' compensation insurance, may face the possibility of a personal injury lawsuit sometime in the future if a subsequently hired and injured worker or the worker's family files a civil lawsuit seeking damages for the personal injuries sustained. Employers who choose to cover their workers gain a clear legal advantage since under the workers' compensation statute employers who have covered their employees are exempt from civil damage suits.

C. National Labor Relations Act

It is critical also to review the standards followed by The National Labor Relations Board (NLRB) in determining who is an employee under The National Labor Relations Act (NLRA). Such an understanding is important because of the rights accorded those defined as "employees" under the Act. These rights include the freedom to join labor organizations, the freedom to bargain collectively and the right to engage in concerted activities. These rights of "employees" are expressly granted under the Act and as a result, it is important to distinguish between independent contractors and employees from this labor relations perspective.

The National Labor Relations Board, which administers The National Labor Relations Act, has traditionally employed the right of control test to distinguish an employee from an independent contractor. The Board has held that, "(a)n employment, rather than an independent contractor relationship is held to exist if the person for whom the services are performed reserves the right to control not only the end to be achieved, but also the manner and means to be used in reaching such result." National Freight Inc. v. NLRB, 55 LRRM 1259 (1964). The Board, however, has cautioned that it does

not use a mechanical right of control test, but looks at the economic realities of each particular case.

It is important to recognize the standards used in the area of labor law because an employer may be subject to an unfair labor practice charge if the same employer refuses to grant "employees" the rights accorded to them under the NLRA.

D. Unemployment Compensation

The standards and tests employed by courts in determining who is an independent contractor v. an employee under the unemployment compensation laws differ from the standards used by the courts in workers' compensation. Although the state courts view state unemployment compensation taxes as a means of social welfare protection for workers, the ramifications of being unemployed are apparently not as great as that of being disabled, and as a result, the courts employ a less strict test in the area of unemployment compensation.

In the area of unemployment compensation, an individual will generally be considered an independent contractor if:

- a. the individual is free from control over performance;
- b. services are performed outside the regular course or place of the contracting party's business and
- c. the individual is customarily in an independent business.

Some states have modified this three pronged general test by adopting a more strict definition of who is considered an independent contractor. For instance, in Wisconsin any contractor providing a service is presumed to be an employee. The burden of proof is on the logging operator, who must prove that the individual claiming him as "employer" for unemployment compensation purposes is an independent contractor and therefore, ineligible for such payments.

To establish an independent contractor relationship in Wisconsin, the employer must prove that both of the following criteria are met:

First, the employer must show that the contractor is free from control or direction of performance of services both under contract and in actual practice. Independent status could probably be maintained if it could be proven that the logging operator's only exercise of control was in establishing harvesting and product specifications. The existence of freedom from control could be evidenced further by demonstrating that the contractor provided the equipment used and controlled the use of it, refused to accept unprofitable contracts, negotiated contract prices for each job, and if the facts showed a clear-cut division of responsibility.

Second, the employer must show that the services performed by the individual are performed in an independently established trade or business. This could be proven by showing that the independent contractor publicly advertised for business, produced for or sold to others from time to time, and engaged in unrelated work.

To prove that an individual is an independent contractor in Wisconsin, the employer must show that both of the criteria just listed have been satisfied. If the employer can only prove one of them, then the individual will be considered an employee.

In Wisconsin the courts may also look to a whole series of other facts to determine liability for unemployment compensation purposes. For protection, a business should make sure that the service contractors being dealt with are sufficiently independent of its control and are recognizable as established businesses. Most of the following criteria should be present in the relationship to establish this independence:

(the term service contractor generally means the same as independent contractor)

- A. The service contractor is responsible for the specifications of the job.
- B. The service contractor owns and controls all the equipment necessary to perform the contract.
- C. The service contractor advertises business services.
- D. The service contractor has service contracts with others.
- E. The service contractor has a place of business to store and to repair equipment.
- F. At least some of the time, the contractor in its own name, purchases timber rights from land owners and sells the products produced instead of the services.
- G. A written contract spells out the independence of the service relationship, and the actual service relationship conforms to the terms of the written contract.
- H. The service contractor has the skills and experience to perform the contract and run the business.

These same criteria may be examined as well by courts in Minnesota to determine whether there is liability for unemployment compensation payments.

Minnesota, however, has not yet adopted the strict two pronged test that Wisconsin has established, and has tended to adhere to the "right of control" test. This test was set out for unemployment compensation purposes in Rochester Gary Company v. Christgau, 14 N.W.2d 780 (Minn. 1944). The court held there that "in determining whether one acting for another is a servant within this act or an independent contractor, no general rule can be laid down to cover all situations, but the test most emphasized is the right of control test." The court went on to state that "where a person for whom services are performed controls a person doing work as to the result, but not as to the means of obtaining that result, ordinarily the employer-employee relationship does not exist."

The Minnesota courts appear satisfied to stay with the right of control test.

E. Social Security Taxes

To determine who is liable for withholding social security taxes from an individual's paycheck, the courts have uniformly applied the common law test to resolve the independent contractor v. employee question. The common law test is basically a paraphrase of the right to control test. The common law test simply states that an independent contractor is an individual who, exercising independent employment, contracts to do a piece of work according to the contractor's own methods and without being subject to the control of the employer except as a result of this work. This again is a fairly broad test and is not nearly as strict as the test employed by the courts for workers' compensation. To assist individuals in deciding who is liable for the social security taxes, the IRS has produced a publication which refers to a situation with respect to independent contractor v. employee in the social security setting. This is what the IRS will examine:

"Under the usual common law rules, the relationship of employer and employee generally exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. That is, an employee is not subject to the will and control of the employer not only as to what shall be done, but how it shall be done. In this connection, it is not necessary that the employer actually directly controlled the manner in which the services are performed; it is sufficient if he has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is an employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place of work to the individual who performs a service. In general, if an individual is subject to the control or direction of another, namely as to the result to be accomplished by the work, and not as to the means and methods of accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not, as to such service, an employee under the usual common law rules."

When using the common law test, the courts will focus on the question of right to control, and then will evaluate the situation considering the factors that will tend to prove or disprove the right to control such as right to discharge and supplying of equipment, supplies and other materials.

F. Income Tax

Generally, an employer must withhold federal and state income tax from an employee's wages. "Wage" is defined to include all remuneration for services, whether in cash or through other types of remuneration.

Since it is the IRS that monitors and controls the responsibility for withholding of federal income taxes (the corresponding department of revenue on the state level), and since this agency also has responsibility for the social security withholding, the tests employed by the IRS in determining who is responsible for withholding income taxes are identical to the tests the IRS uses for social security withholding. The factors and tests enumerated here in determining who is an employee for social security purposes will also be used by the IRS and State Department of Revenue in determining who is an employee for income tax withholding. The focus again will be on the right to control, along with the other criteria used by the courts in conjunction with this test, such as supplying of equipment, selection and dismissal of employees, and the furnishing of tools.

IV. CONCLUSION

It can be seen that the difference between an employee and an independent contractor is critical in several areas: (1) workers' compensation, (2) labor relations, (3) unemployment compensation, (4) social security, and (5) income tax.

When a person is held to be an employee in any one of these areas, the "employer" has liability which may be very large. To prevent and protect against this liability, a sample format of several Independent Contractor Agreements that could be used is included. These are not a cure-all nor will they guarantee that liability will not be found. The agreements do identify areas that should be followed with care. However, when the contract says one thing but you do another, your conduct will govern your relationship.

The following is a brief summary of the standards that a court will likely use in the areas discussed here in connection with the liability of an "employer."

1. Under the tests enumerated, it is apparent that the standards used by the courts and legislature of Minnesota under the Workers' Compensation Laws are strict in defining who is an independent contractor v. an employee. Under the Workers' Compensation Laws the courts tend to find that an individual is actually an employee of an employer either under the statute or under the judicial right to control test.
2. It is clear that the National Labor Relations Board, in administering labor law policy under the National Labor Relations Act, customarily uses the common law right of control test to determine whether those individuals performing services are entitled to engage in concerted organizational activities. The Board, however, will frequently review the economic realities of each situation as well.
3. For unemployment compensation purposes, the federal government has adhered to the right to control test for defining an employer under the Unemployment Compensation Laws. Minnesota and other states

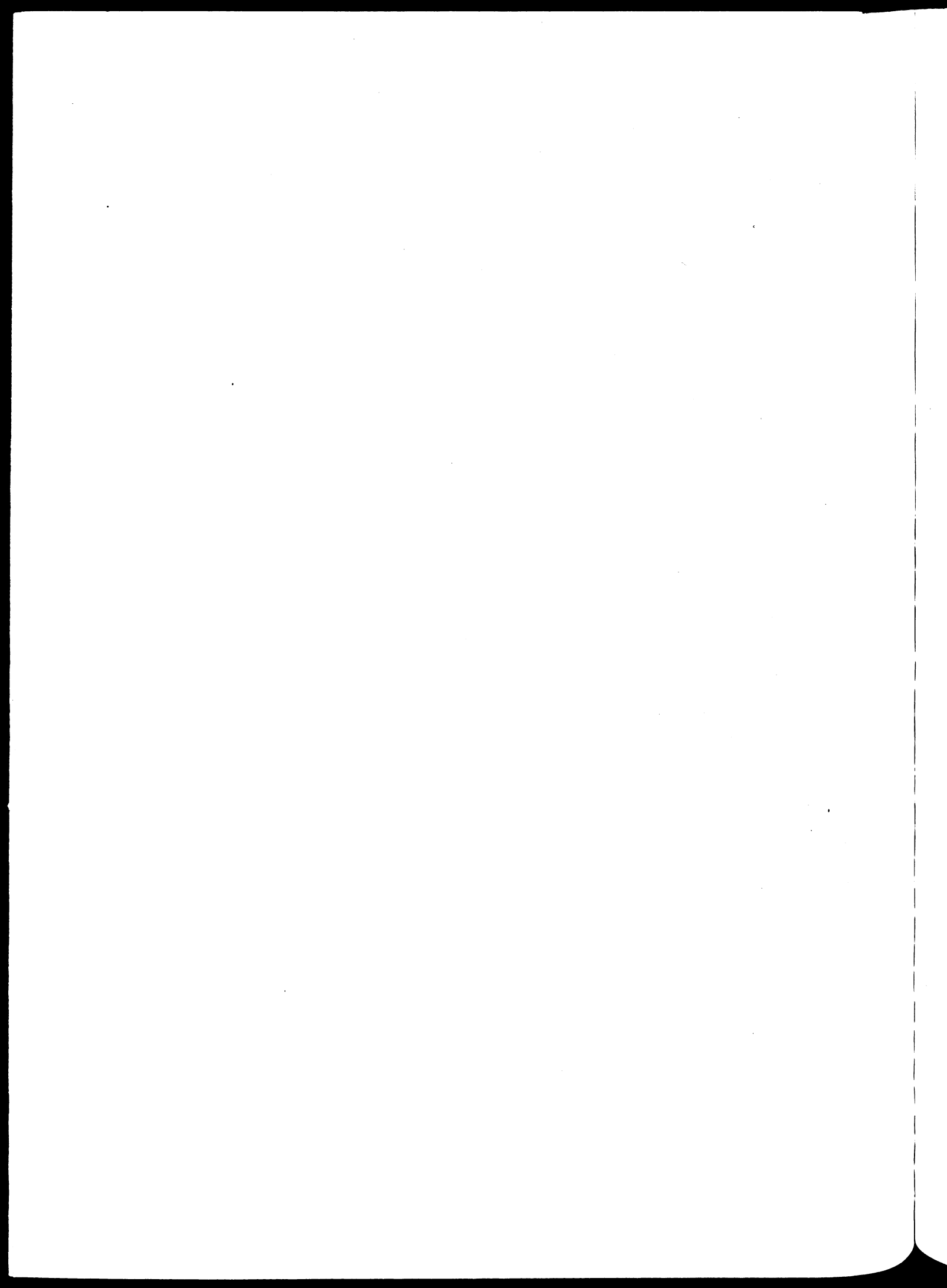
have followed the lead of the federal government in this area. However, certain states such as Wisconsin, as noted, have adopted stricter standards in holding an employer liable for unemployment compensation taxes. It is entirely possible that Minnesota may also adopt the stricter standards of Wisconsin.

4. The IRS as the responsible agency for social security withholding has consistently employed the common law test for defining the employer-employee relationship. The IRS has consistently used the right to control test and has supplemented this test with the other common law factors that have been listed.
5. As with social security, in the field of withholding of income taxes, the IRS again is the responsible agency and essentially uses the same test as used in social security cases for defining the employer-employee relationship in the income tax area.

In summary, it appears entirely possible that an individual could be considered an employer of an employee for workers' compensation purposes, yet not be considered an employer of that employee for unemployment compensation, social security or income tax purposes.

Regardless of the law one is concerned with, it may be helpful to use the attached appropriate independent contractor agreements in all circumstances to assist in avoiding liability, and to insist on having your subcontractors carry workers' compensation insurance. Obviously, there may be no way to avoid statutory liability for workers' compensation insurance despite the existence of the agreement; therefore, it is critical that logging operators who subcontract with individuals who do not carry workers' compensation insurance understand that they may well be held liable.

Further, it should be emphasized that the independent contractor agreement can be very helpful for purposes of income tax, unemployment compensation liability, social security liability, and liability under the National Labor Relations Act, since the courts frequently use the common law right to control test in those situations. The fact that the employer-independent contractor relationship is set out on paper may relieve the employer from liability. However, despite the existence of the agreement, the crucial test will be whether the employer in actual practice has any right to control the performance of services. No matter how the agreement is drawn, the courts will look to the actual facts to determine liability in these situations.



V. APPENDICES

Appendix A

SERVICE CONTRACT

WHEREAS, the undersigned _____,
hereinafter referred to as "Independent Contractor" is prepared to perform
services for _____ Company,
hereinafter "Contracting Company"; and

WHEREAS, _____ Company and the Independent
Contractor mutually agree that services performed by the undersigned shall
be performed as an Independent Contractor and not as an employee; and

WHEREAS, the parties desire to set forth their relationship in writing
so that there may be no misunderstanding as to the relationship and
responsibilities;

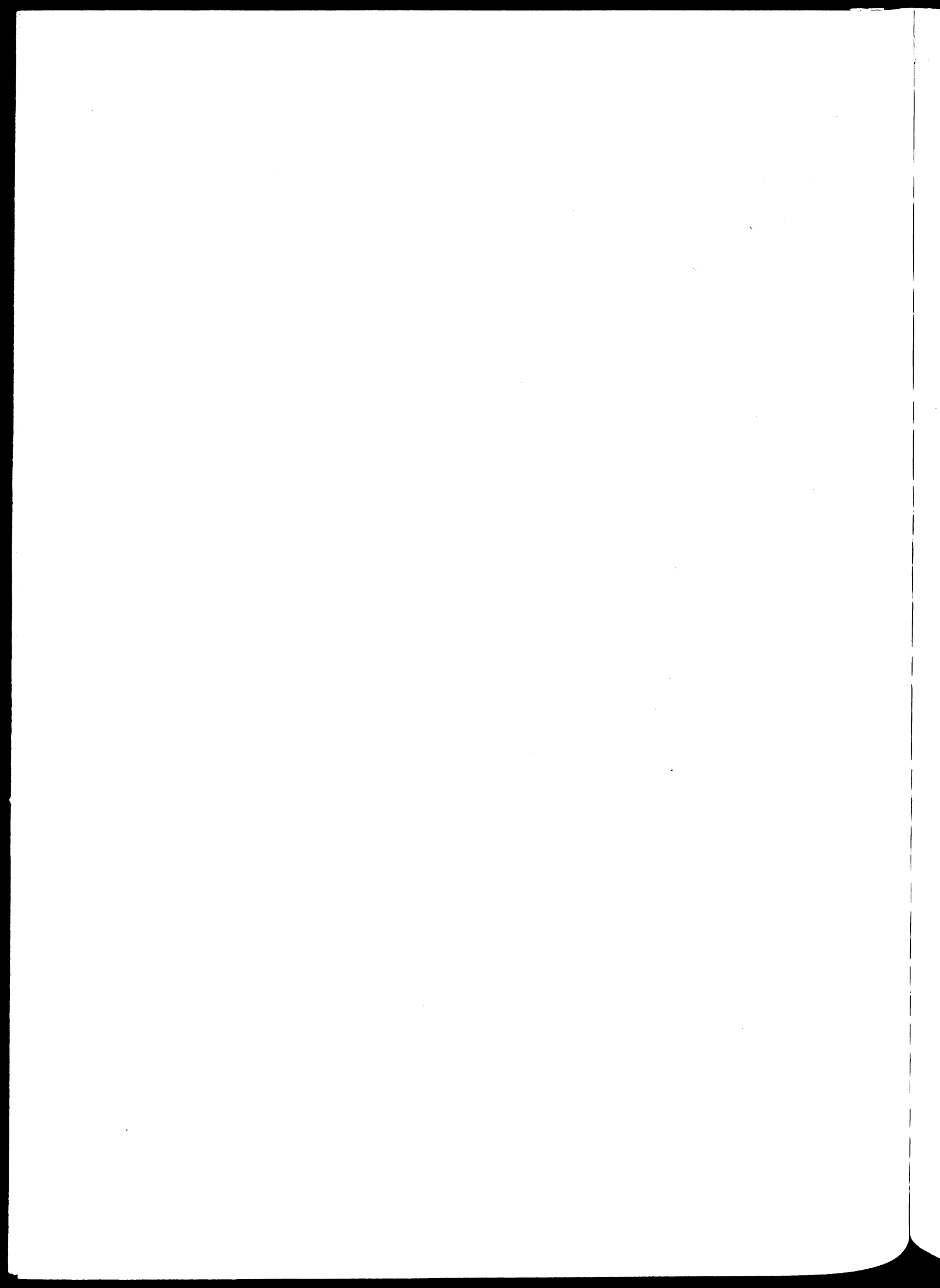
WHEREAS, in consideration of their mutual promises and covenants
contained herein and the engagement by the Contracting Company of the
undersigned as an Independent Contractor;

NOW THEREFORE, the parties do agree as follows:

1. The Independent Contractor is to produce forest products, in
accordance with Attachment I. The parties further agree that
Attachment I is a part of this Agreement in all respects.
2. The terms of this Agreement shall be applicable to situations
involving the purchase of services by the contracting company.
3. The undersigned Independent Contractor agrees that it is performing
its services solely in the capacity of an Independent Contractor.
It is agreed and acknowledged by the parties that the Independent
Contractor is not an employee, partner, associate, agent, or joint
venturer in any of the functions that it performs for the

Independent Contractor

Contracting Company



Contracting Company. The Independent Contractor has a separate place of business at _____.

4. All products delivered to locations stipulated by the Contracting Company and accepted under this contract shall be scaled at a mutually agreed on location by a scaler whose scale shall be final and binding on both parties. Scaling shall be done at the following location or locations:

1. _____

2. _____

3. _____

4. _____

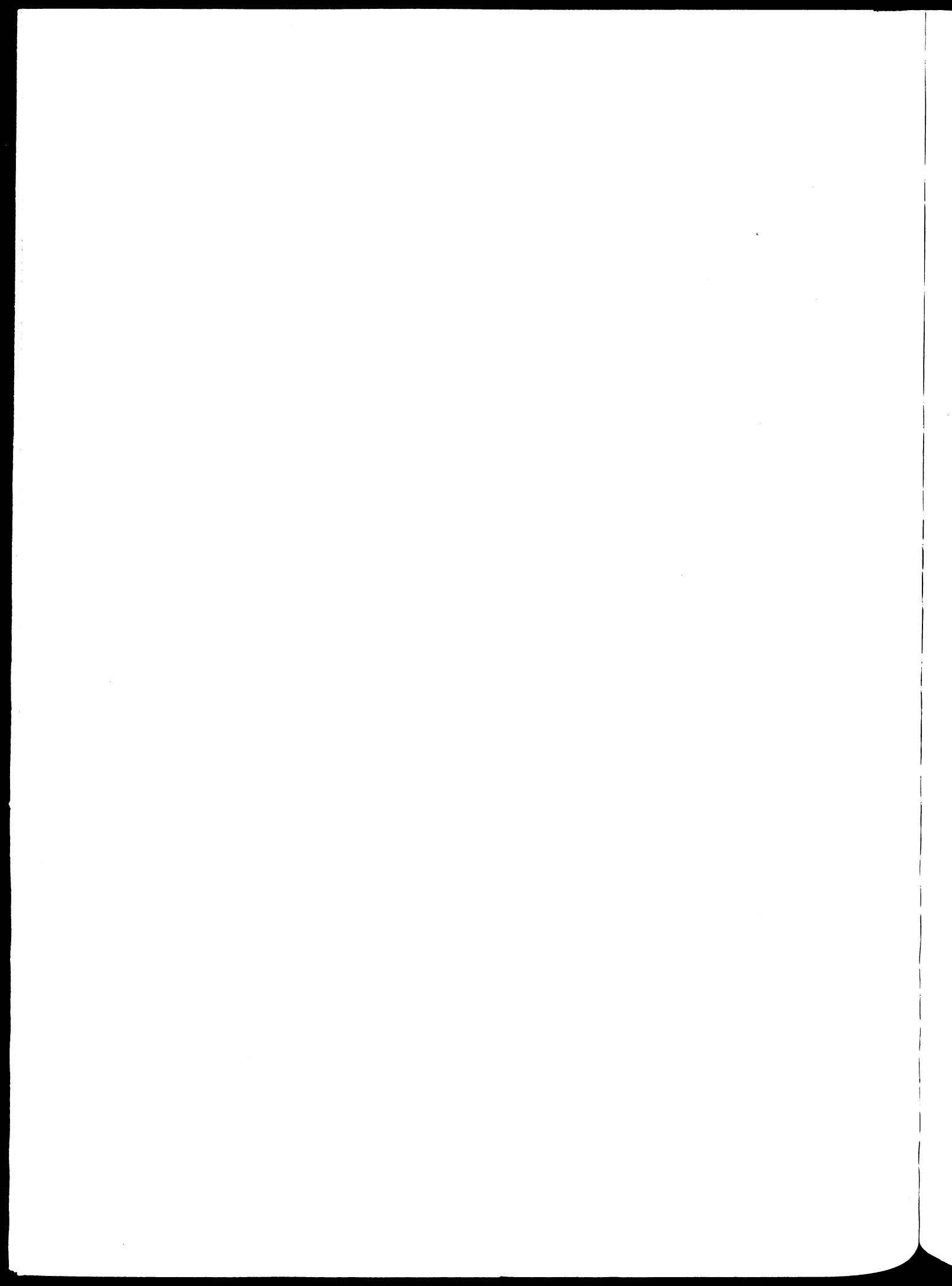
5. The Independent Contractor shall comply with all federal, state, county, or other government regulations or laws, including but not limited to, the Fair Labor Standards Act, the Wage and Hour Laws, the Occupational Safety and Health Act and the Equal Opportunity laws.

6. The undersigned Independent Contractor agrees that it will be fully responsible for all wages, salaries, or other remuneration to its employees, or subcontractors, and that it will be fully responsible for the filing of any forms and returns relating to the payment of such wages.

The undersigned Independent Contractor agrees that it will be solely responsible for the payment of all taxes, fees or charges of any nature, type, or description due as a result of the performance of

Independent Contractor

Contracting Company



the services, including but not limited to, state and federal income taxes. Further, that it will make such payments for Social Security, Workers' Compensation, Unemployment Compensation or other governmental charges, fees, or licenses as may be appropriate or necessary as a result of the performance of services and the receipt of funds for the performance of such services.

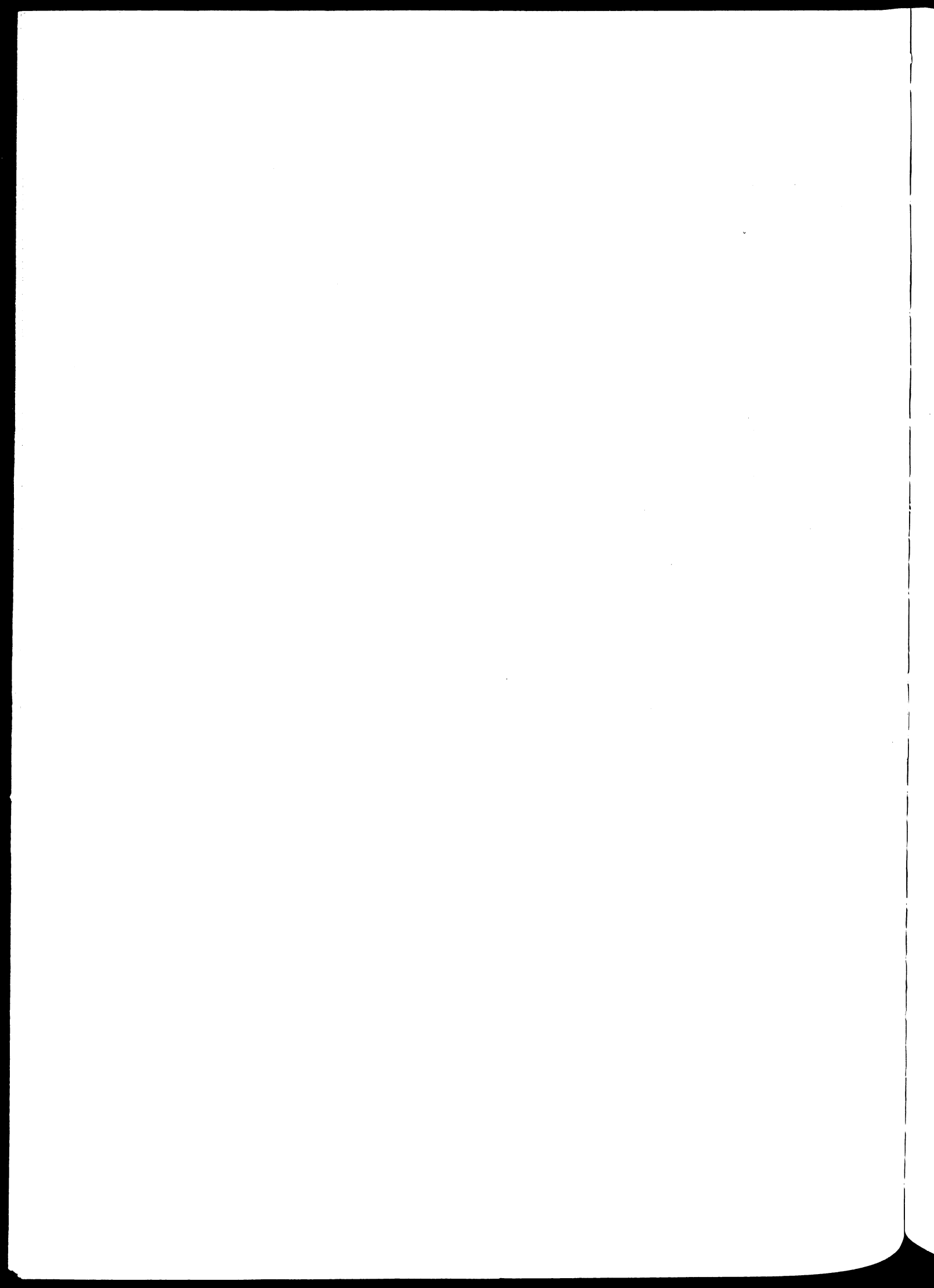
The Independent Contractor will, prior to providing such services under this harvesting Contract, furnish the Contracting Company with proof of coverage of Workers' Compensation insurance covering all employees of Independent Contractor engaged in the harvesting operations under this Contract. The Independent Contractor also will be responsible for requiring its subcontractors engaged in producing or delivering products purchased under this Contract to comply with such laws and regulations.

Independent Contractor's Federal Employer Identification Number is _____ and State Employer Identification Number is _____. Independent Contractor shall be responsible for the filing of information and income tax returns.

7. The undersigned Independent Contractor agrees that it will save and hold harmless the Contracting Company from any and all claims, penalties or expenses of any nature, type or description whatsoever, including reasonable attorney's fees, whether asserted by an individual, organization, or governmental agency or subdivision connected or in any way related with the performance of any services to be performed for the Contracting Company. In furtherance of this clause, Independent Contractor shall carry Public Liability insurance

Independent Contractor

Contracting Company

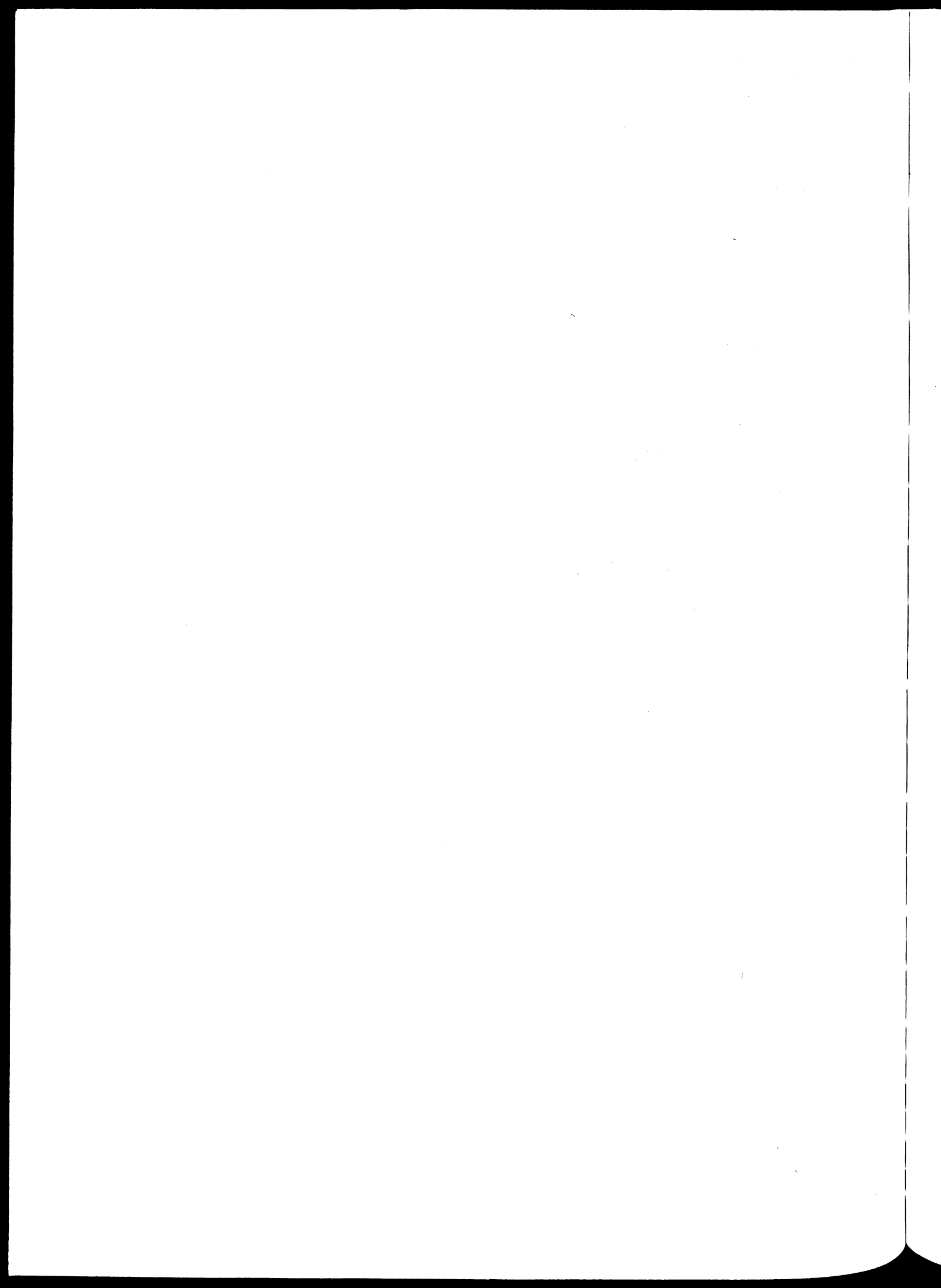


in the amount of \$ _____ and property damage insurance in the amount of \$ _____. Independent Contractor will be responsible for the same insurance requirements on the part of any of its subcontractors.

8. The Contracting Company agrees that it will remunerate the undersigned Independent Contractor for its services according to the schedule of payment attached hereto and made a part hereof.
9. The Contracting Company agrees that the undersigned Independent Contractor shall have the sole control of the method, hours worked, time and manner of performance of the services to be performed hereunder. The Contracting Company reserves the right only to inspect the job site for the sole purpose of ensuring that the end result will be or has been accomplished. The Contracting Company takes no responsibility for supervision or direction of the performance of any of the services to be performed by the undersigned Independent Contractor or of its employees or subcontractors. The Contracting Company further agrees that it will exercise no control over the selection and dismissal of the Independent Contractor's employees.
10. The Contracting Company agrees that it will initially designate the work to be performed. It will also make a final inspection within a reasonable period of time after the undersigned Independent Contractor claims that the work has been completed so final payment can be made. All work will be performed in a workmanlike manner. Work shall be performed in accordance with the requirements of the landowner. The work that is to be performed along with the legal descriptions of the property are set out in Attachment II.

Independent Contractor

Contracting Company



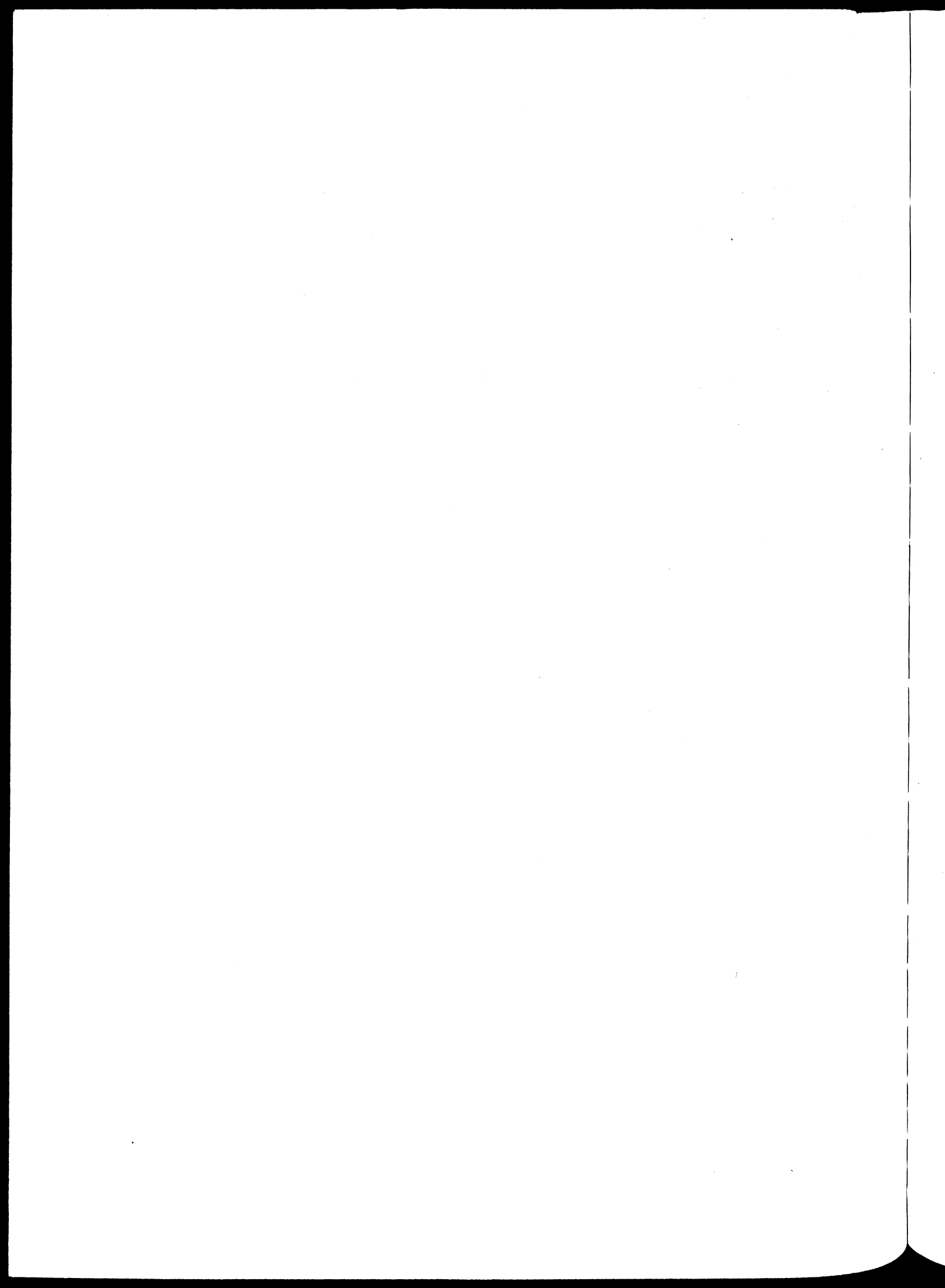
11. The undersigned Independent Contractor agrees that it will furnish all materials, labor, equipment, tools and other items necessary for the performance of the contractual undertaking that it has assumed herein. The undersigned Independent Contractor agrees that it has a substantial economic investment in tangible assets used in performing the services hereunder. Independent Contractor will serve as the sole employer with respect to any of the employees employed by the Independent Contractor for the performance of the services required hereunder.
12. The Independent Contractor shall not assign or sublet this Agreement without the prior written consent of the Contracting Company.
13. Independent Contractor has inspected the premises and knows and accepts them as being satisfactory to perform the Contract without risk to person or property.
14. This Contract constitutes the full and final agreement and understanding between the parties and is a complete statement of the intended terms. This Contract shall not be modified except by a writing signed by both of the parties hereunder.

The time period of this Agreement shall begin on _____, 19__, and shall continue until the termination date of _____, 19__, unless earlier termination is requested by either party by _____ days written notice to the other.

IN WITNESS WHEREOF, the parties have set their hands this _____ day of _____, 19__.

Independent Contractor

Contracting Company



We have read and understood this Agreement and have received a copy of this Agreement. We understand that the Independent Contractor and its operation is NOT and will NOT be covered with Workers' Compensation insurance supplied by the Contracting Company.

Approved and agreed to by Independent Contractor:

Witness

By _____

Its _____

(working title)

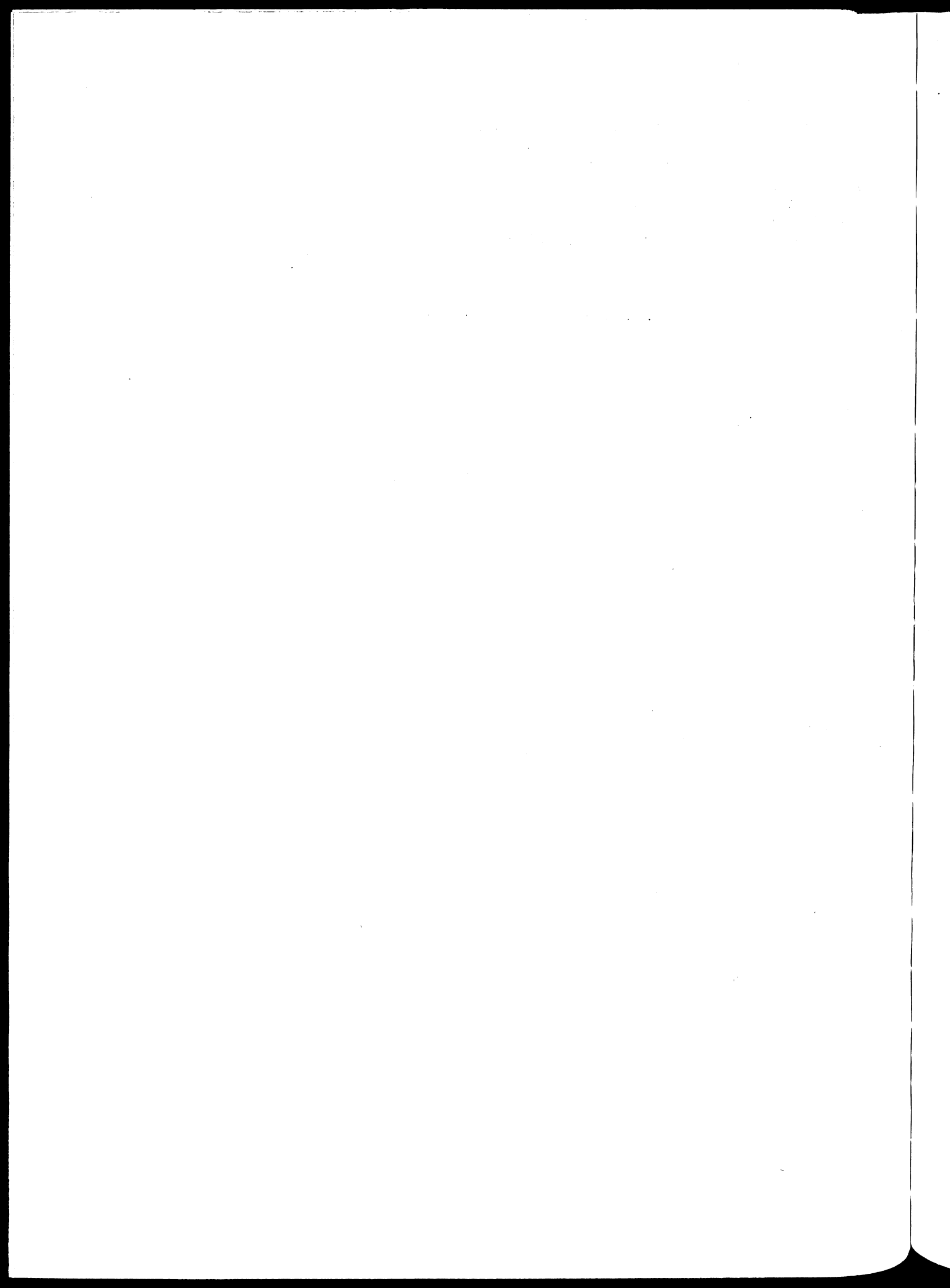
Approved and agreed to by Contracting Company:

Witness

By _____

Its _____

(working title)



SCHEDULE OF PAYMENT

<u>Species</u>	<u>Product</u>	<u>Unit/Value</u>	<u>Volume</u>
----------------	----------------	-------------------	---------------

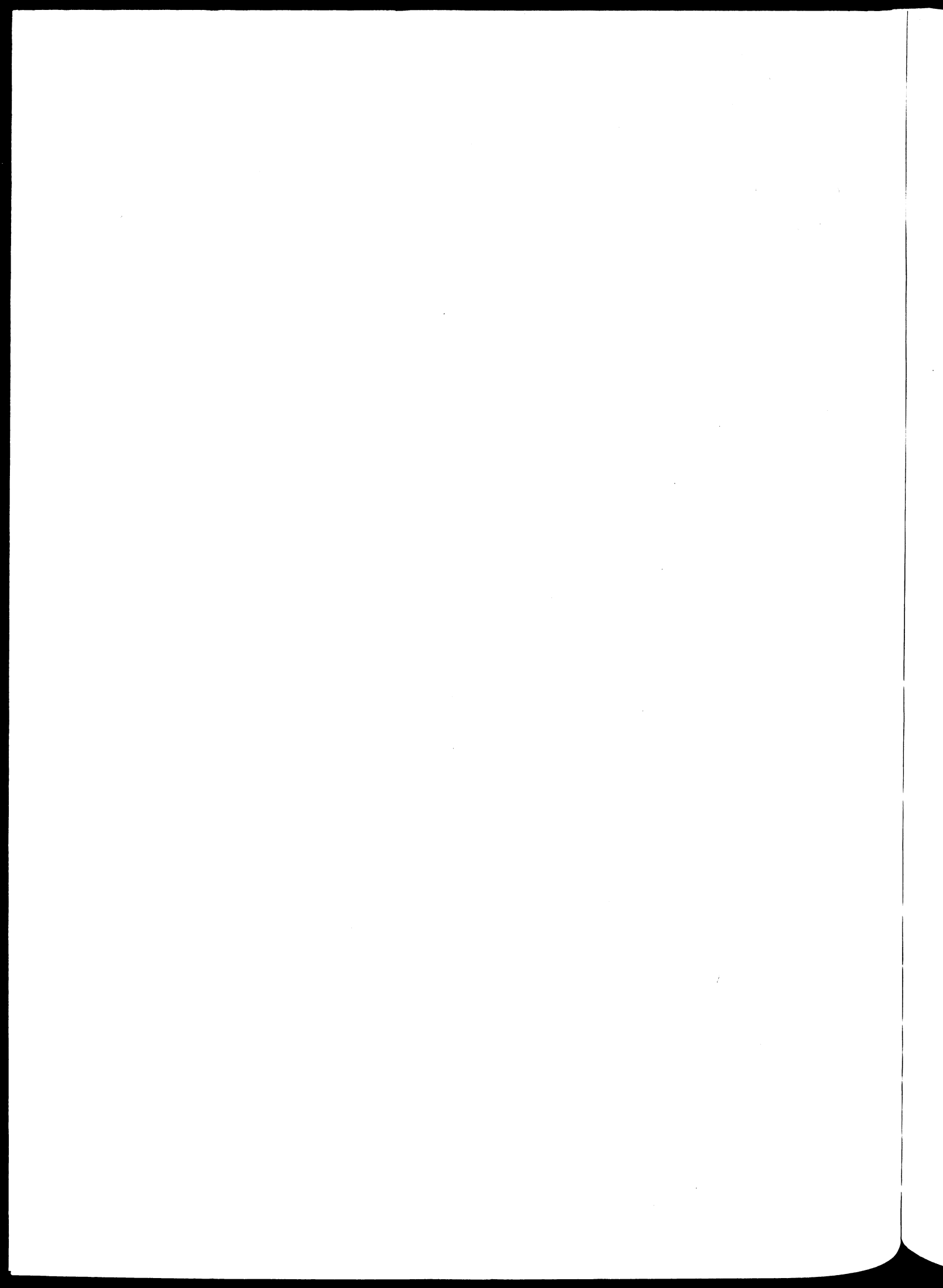
Advance payment may be made by the Contracting Company on the following basis:

Payment will be made to the Independent Contractor on the following basis:

The last payment shall be held until the work has been inspected and certified as completed. This shall be accomplished within 30 days after it is claimed that the work has been completed.

Independent Contractor

Contracting Company



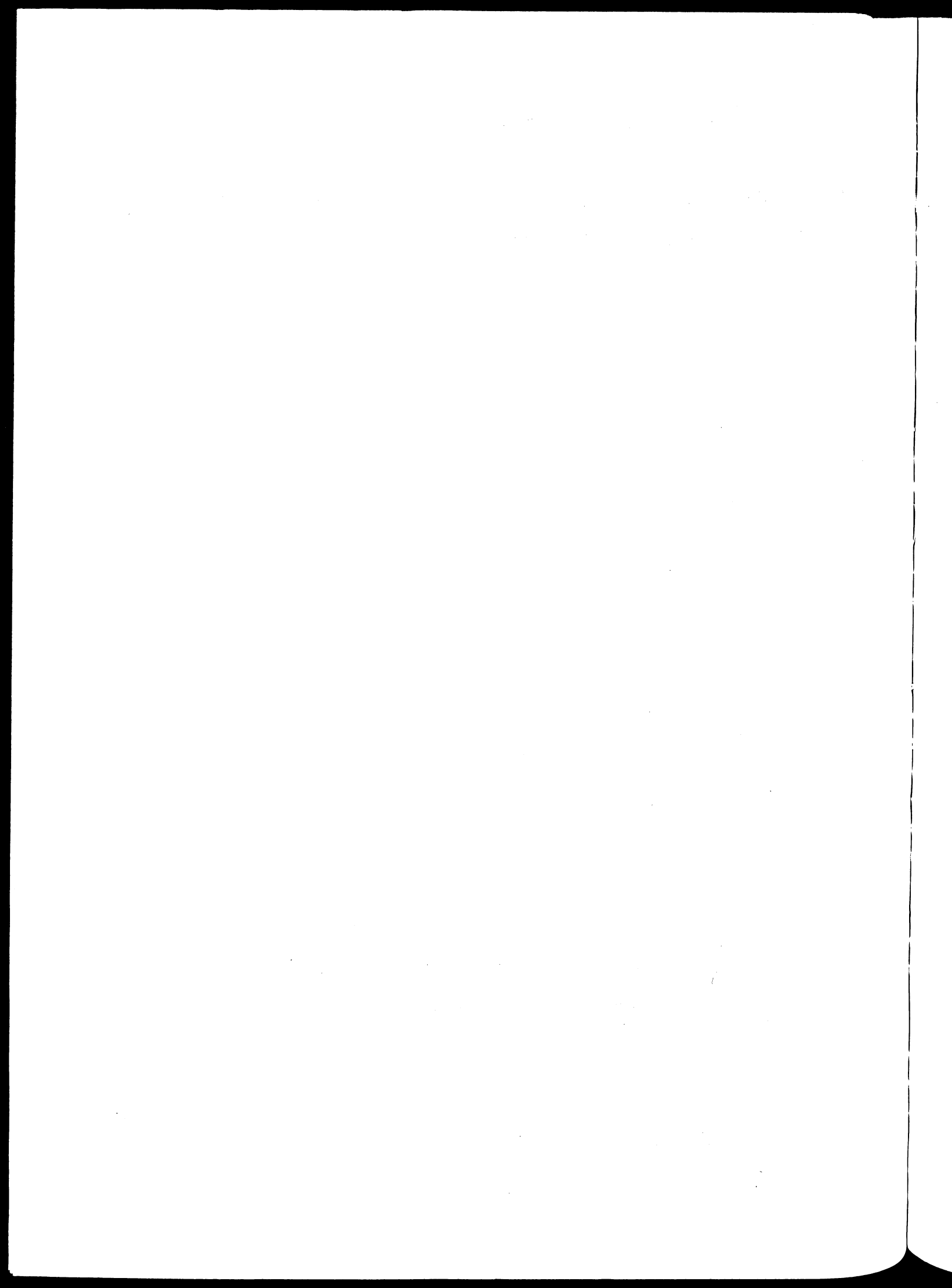
ATTACHMENT I

Products delivered under this contract shall conform to specifications as designated by the contracting company as follows:

Contracting Company reserves the right to periodically publish other specifications for sold and delivered products.

Independent Contractor

Contracting Company



ATTACHMENT II

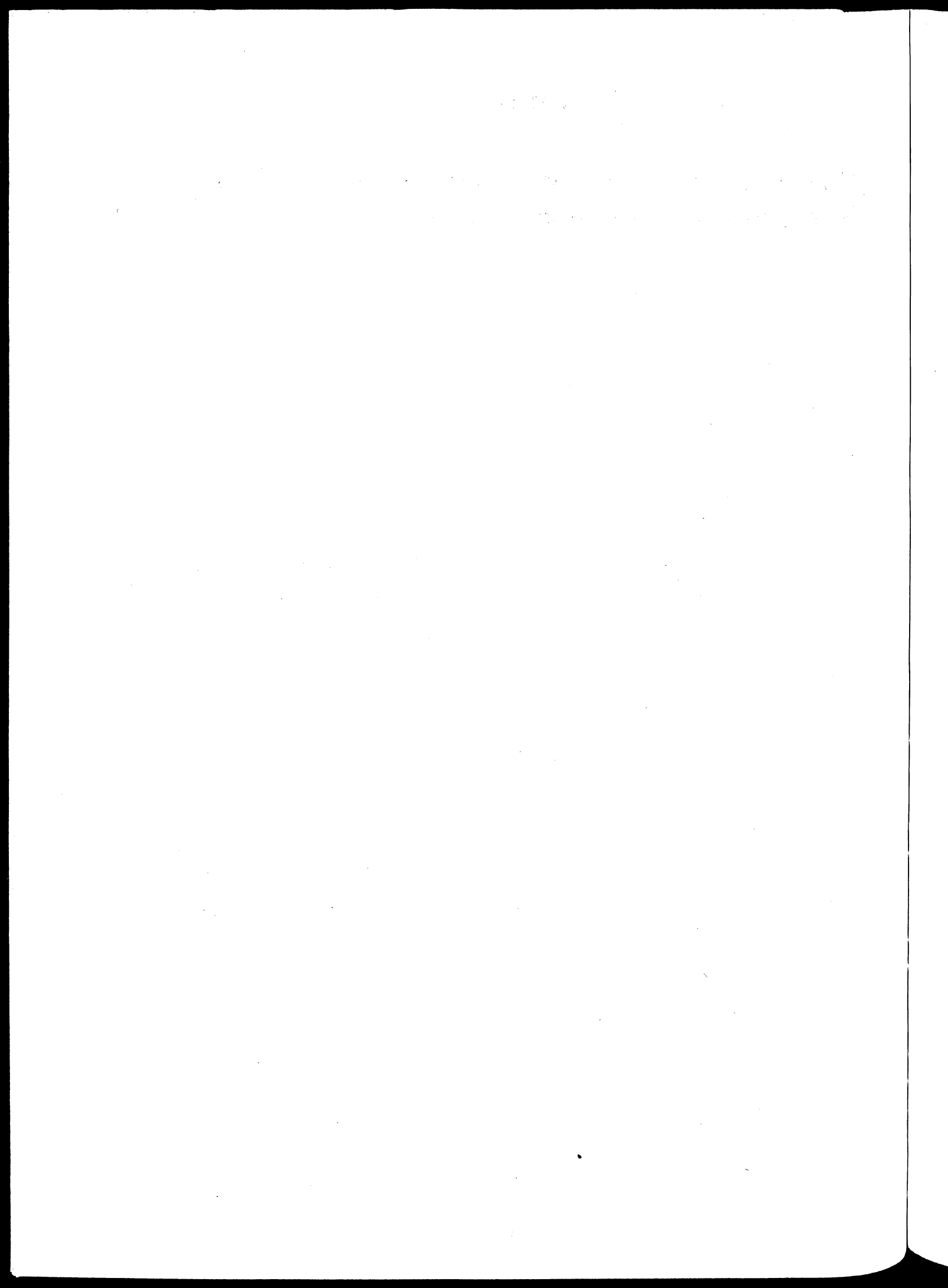
The wood to be harvested under the terms of this agreement shall be mutually agreed on between the parties as follows:

The wood to be harvested shall be obtained from and only from stumpage designated on the _____, tract, owned by _____ legally described as:

Independent Contractor will stay within the boundary lines of the cutting area and will not cut beyond the boundaries of the properties instead.

Independent Contractor

Contracting Company



Appendix B

TIMBER SALE CONTRACT

(SALE OF STUMPAGE AND NO OTHER RELATIONSHIP)

WHEREAS, the undersigned _____, hereinafter referred to as "Purchaser" is prepared to purchase timber from _____ Company, hereinafter "Seller"; and

WHEREAS, _____ Company is prepared to sell timber under the terms and conditions hereunder; and

WHEREAS, _____ Company and the Purchaser mutually agree that activities performed by the undersigned under this timber sale contract shall be performed as a Purchaser and not as an employee; and

WHEREAS, the parties desire to set forth their relationship in writing so that there may be no misunderstanding as to the relationship and responsibilities;

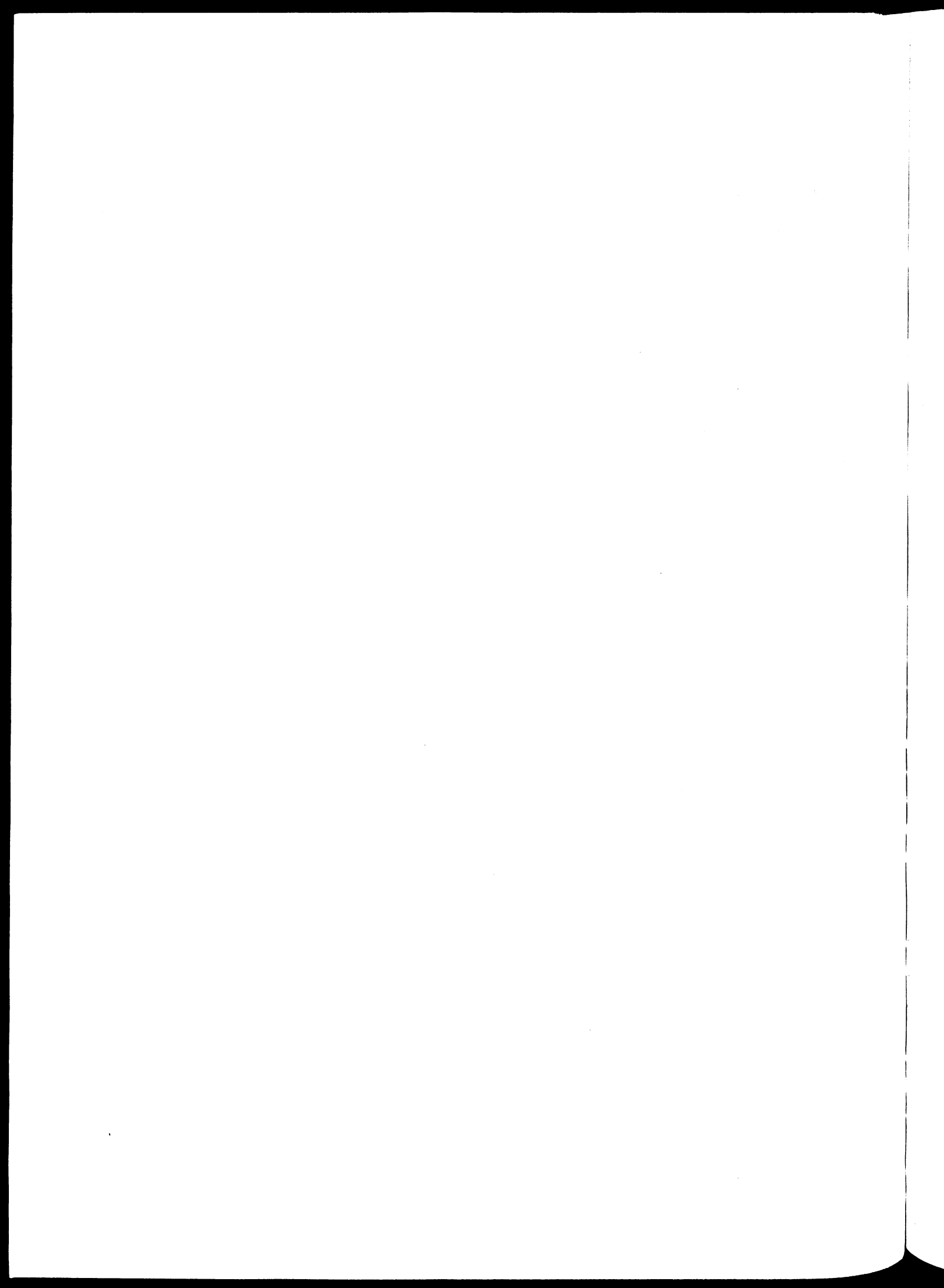
NOW THEREFORE, the parties do agree as follows:

Because the Purchaser is to purchase timber, the parties agree to complete Attachment I. They further agree that Attachment I is a part of this Agreement in all respects.

1. The terms of this Agreement shall be applicable to situations involving the purchase of timber.
2. The undersigned Purchaser shall purchase and the Seller shall sell the timber specified in Attachment II.
3. The undersigned Purchaser agrees that it is acting solely in the capacity of an independent party in carrying out the terms of this

Seller

Purchaser

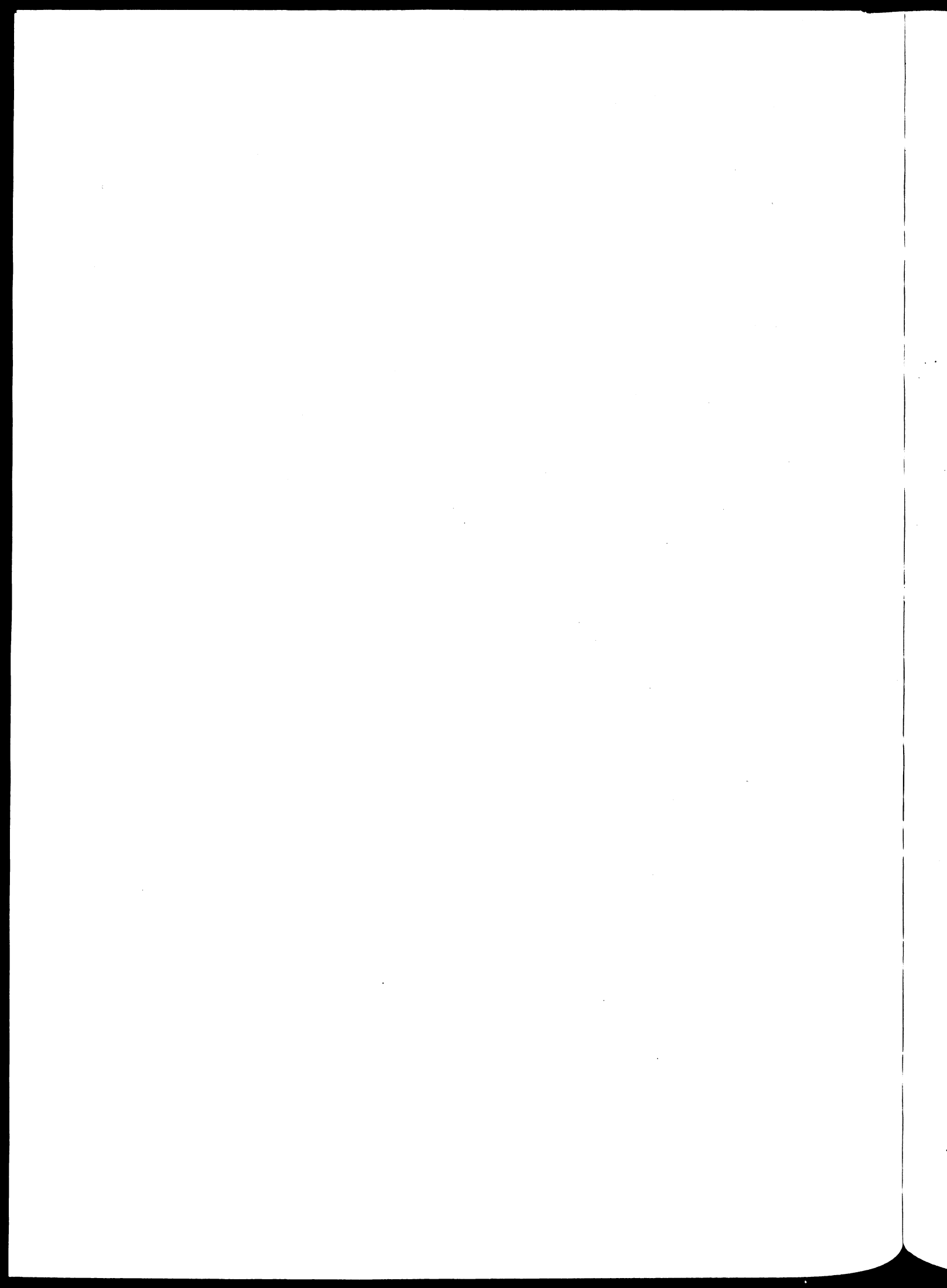


timber sale contract. It is agreed and acknowledged by the parties that the purchaser is not an employee, partner, associate, agent, or joint venturer in any of the functions that it performs for the seller. The Purchaser has a separate place of business at _____.

4. The undersigned Purchaser agrees that it will save and hold harmless the Seller from any and all claims, penalties or expenses of any nature, type or description whatsoever, including reasonable attorney's fees, whether asserted by an individual, organization or governmental agency or subdivision connected or in any way related with the purchase and harvest of timber by the Purchaser. In furtherance of this clause, Purchaser shall carry Public Liability insurance in the amount of \$ _____ and property damage insurance in the amount of \$ _____. Purchaser will be responsible for the same insurance requirements on the part of any of its subcontractors.
5. The Purchaser agrees that it will remunerate the undersigned Seller for its purchase of timber according to the terms and schedule of payment attached hereto and made a part hereof.
6. The Seller agrees that the undersigned Purchaser shall have the sole control of the method, hours worked, time and manner of any timber cutting to be performed hereunder. The Seller reserves the right only to inspect the job site for the sole purpose of ensuring that the cutting is progressing in compliance with the cutting practices established hereunder. The Seller takes no responsibility for supervision or direction of the performance of any of the harvesting to be performed by the undersigned Purchaser or of its

Seller

Purchaser



employees or subcontractors. The Seller further agrees that it will exercise no control over the selection and dismissal of the Purchaser's employees.

7. The Seller agrees that it will initially designate the timber to be sold and will also make a final inspection for purposes of ascertaining whether the timber has been cut in compliance with the specifications set out in Attachment I. All work will be performed in a workmanlike manner. Work shall be performed in accordance with the requirements of the landowner. The timber that is to be cut along with the legal descriptions of the property are set out in Attachment II. The parties stipulate that in fulfillment of the terms of this timber sale contract the Seller warrants that he has clear and unencumbered title to the stumpage as the subject of this contract.
8. The undersigned Purchaser agrees that it will furnish all materials, labor, equipment, tools, and other items necessary for the performance of the contractual undertaking that it has assumed herein.
9. The Purchaser shall be responsible for the filing of its own information returns and income tax forms.
10. The Purchaser shall not assign or sublet this Agreement without the prior written consent of the Seller.
11. Purchaser has inspected the premises and knows and accepts it as being satisfactory to perform the Contract without risk to person or property.
12. This Contract constitutes the full and final agreement and understanding between the parties and is a complete statement of

Seller

Purchaser



the intended terms. This Contract shall not be modified except in writing signed by both of the parties hereunder.

The time period of this Agreement shall begin on _____, 19__, and shall continue until the termination date of _____, 19__, unless earlier termination is requested by either party by _____ days written notice to the other.

IN WITNESS WHEREOF, the parties have set their hands this _____ day of _____, 19__.

We have read and understood this Agreement and have received a copy of this Agreement. We understand that the Purchaser and its operation in NOT and will NOT be covered with Workers' Compensation insurance supplied by the Seller.

Approved and agreed to by Purchaser:

Witness

By _____

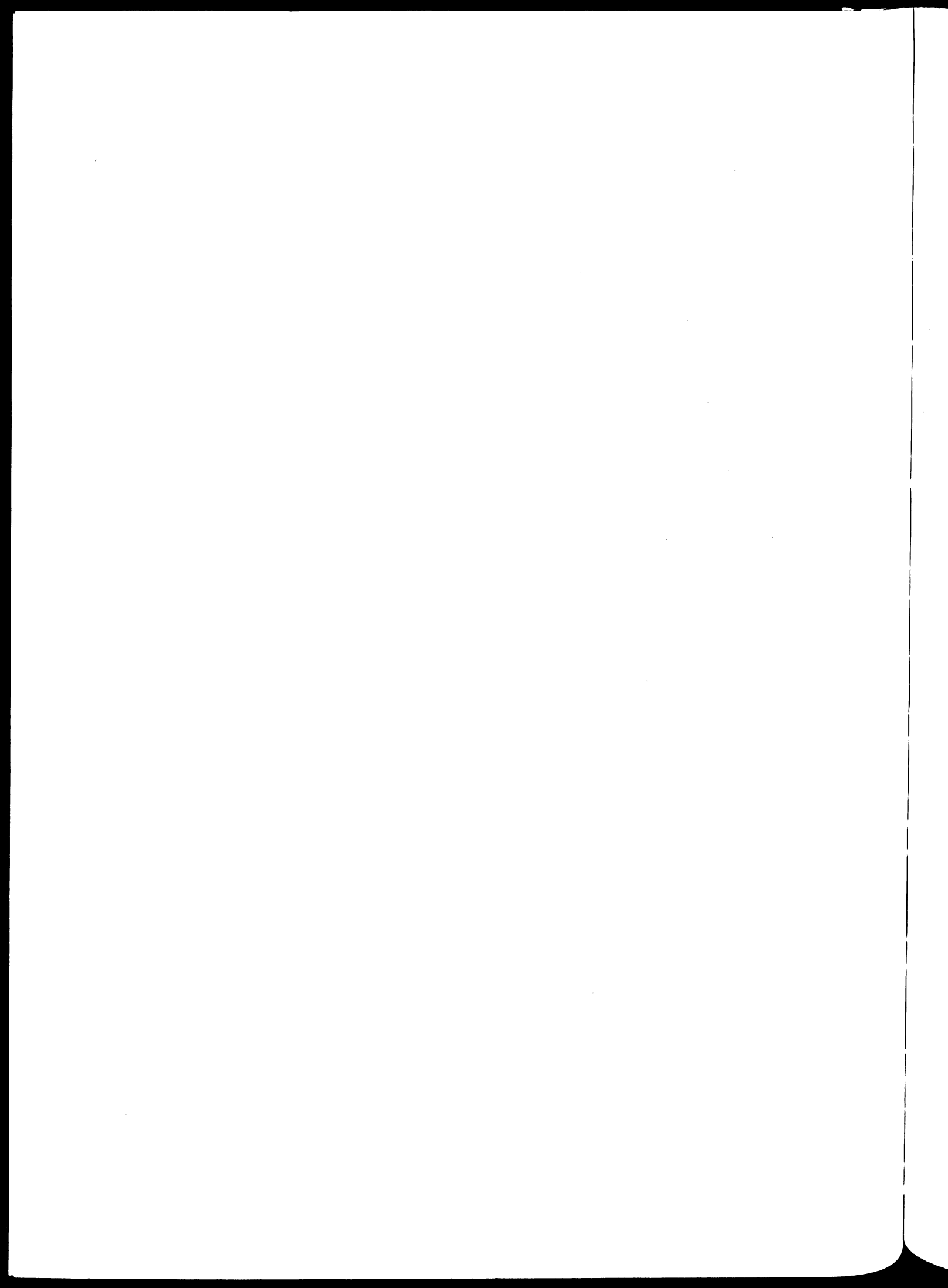
Its _____
(working title)

Approved and agreed to by Seller:

Witness

By _____

Its _____
(working title)



SCHEDULE OF PAYMENT

The Purchaser and the Seller hereby agree to the following schedule of payment:

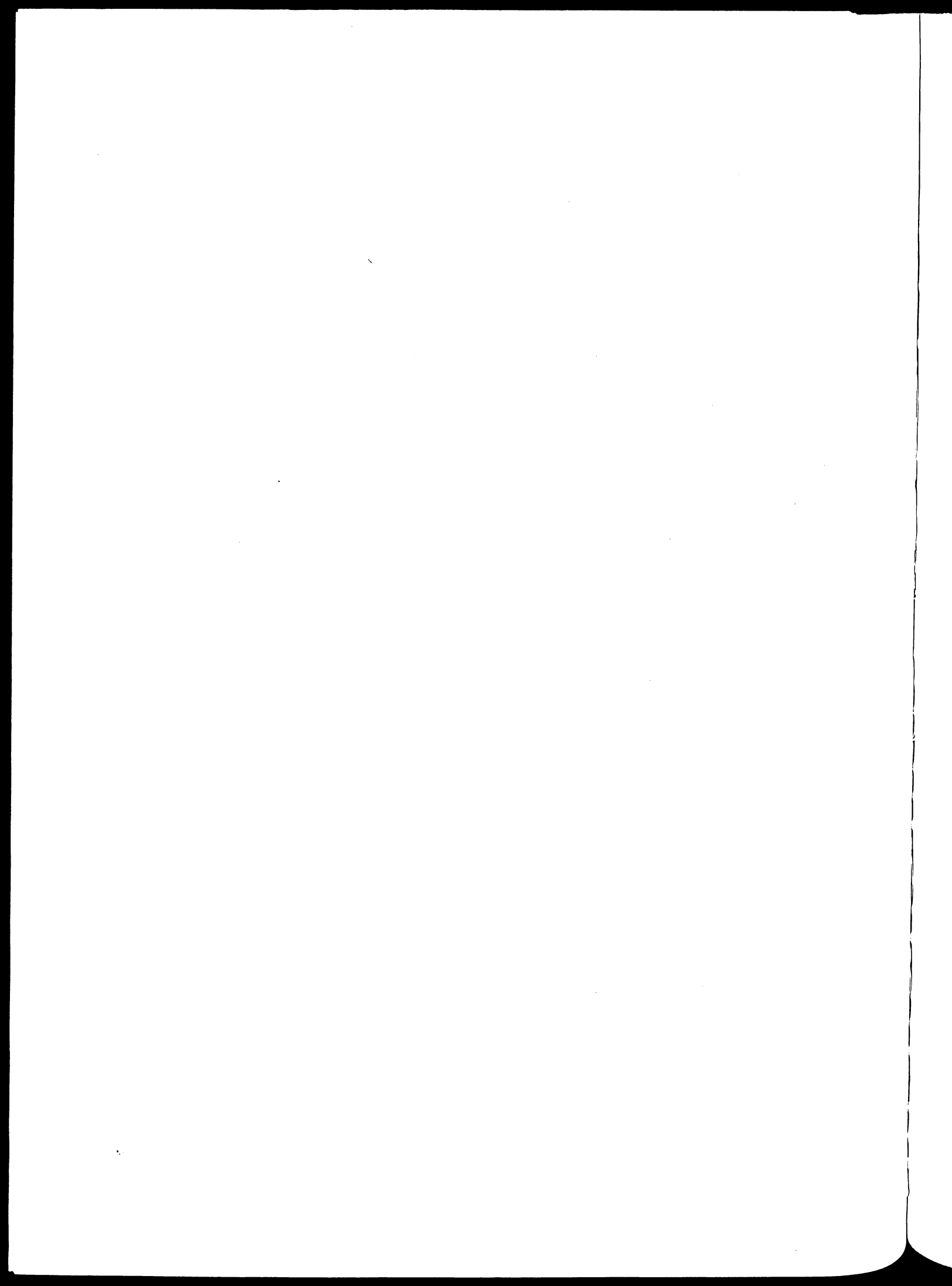
Purchaser shall pay to Seller _____
(\$_____) per mutually agreed scale for the following species with values as follows:

<u>Species</u>	<u>Estimated volume and unit of measure</u>	<u>Unit price</u>
----------------	---------------------------------------------	-------------------

Stumpage payments will be made to the Seller on the following basis:

Seller

Purchaser

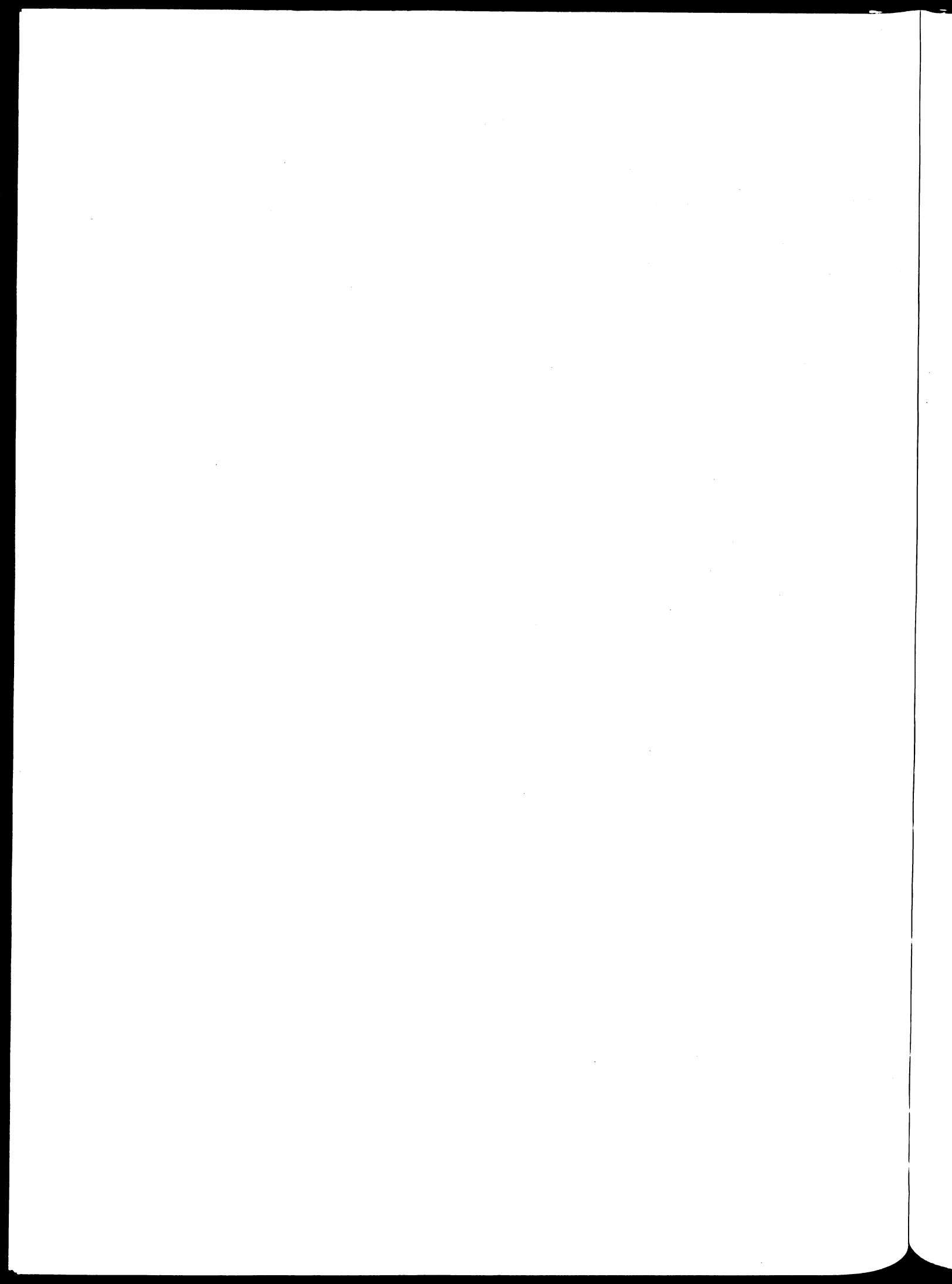


ATTACHMENT I

Any timber cut under this contract shall conform to cutting specifications as designated by the seller as follows:

Seller

Purchaser



ATTACHMENT II

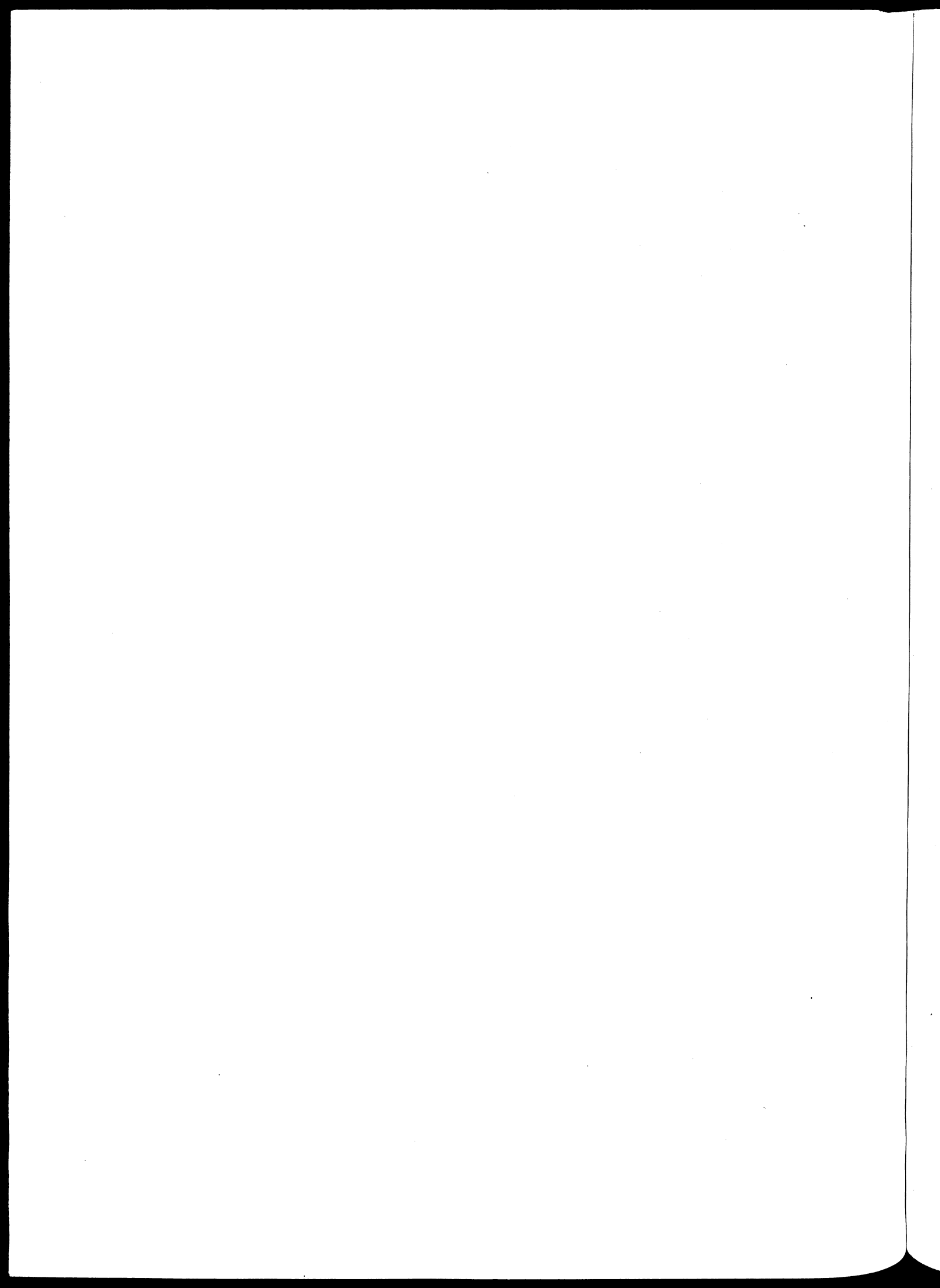
The timber to be removed under the terms of this agreement shall be mutually agreed upon between the parties as follows:

The timber to be harvested shall be obtained from and only from the designated stumpage on the _____, tract, owned by _____ legally described as:

Purchaser will stay within and not cut beyond the boundaries set out above.

Seller

Purchaser



Appendix C

PURCHASE CONTRACT

(PURCHASE OF SOME PRODUCT AND NO OTHER RELATIONSHIP)

WHEREAS, the undersigned _____, hereinafter referred to as "Seller" is prepared to sell and deliver timber products to _____ Company, hereinafter "Purchaser"; and

WHEREAS, _____ Company is prepared to buy and pay for such timber products under the terms and conditions hereunder; and

WHEREAS, _____ Company and the Seller mutually agree that activities to be performed by the Seller in selling and delivering timber products shall be performed as an Independent Contractor and not as an employee; and

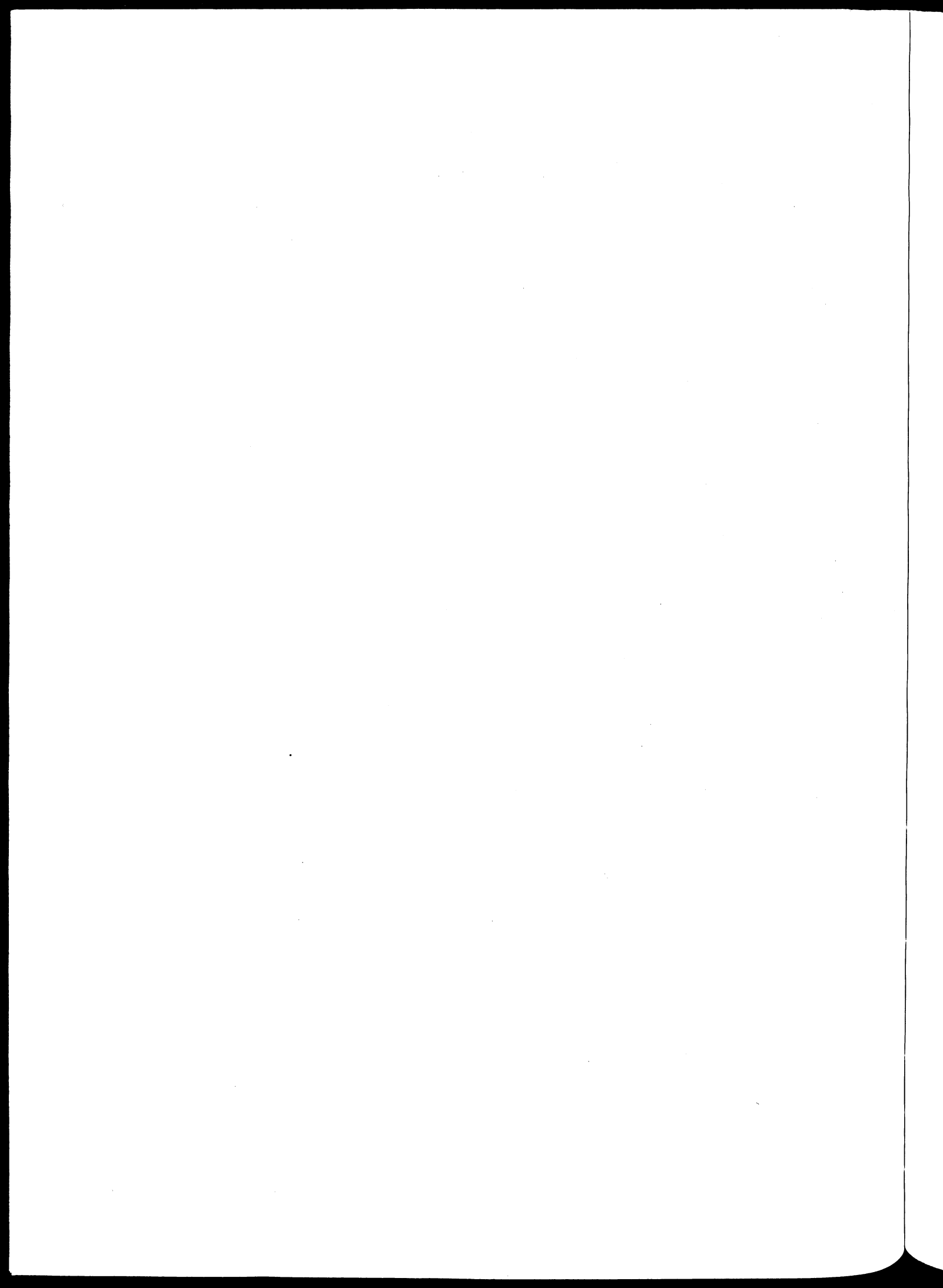
WHEREAS, the parties desire to set forth their relationship in writing so that there may be no misunderstanding as to the relationship and responsibilities;

NOW THEREFORE, because the Seller is to sell and deliver forest products, the parties agree to complete Attachment I. They further agree that Attachment I is a part of this Agreement in all respects and, in consideration of their mutual promises and covenants contained herein, the parties do further agree as follows:

1. The terms of this Agreement shall be applicable to situations involving the purchase of timber products by the Purchaser.
2. The Seller shall sell and deliver and the Purchaser agrees to purchase the timber products specified in the Schedule of Payment attached hereto.

Seller

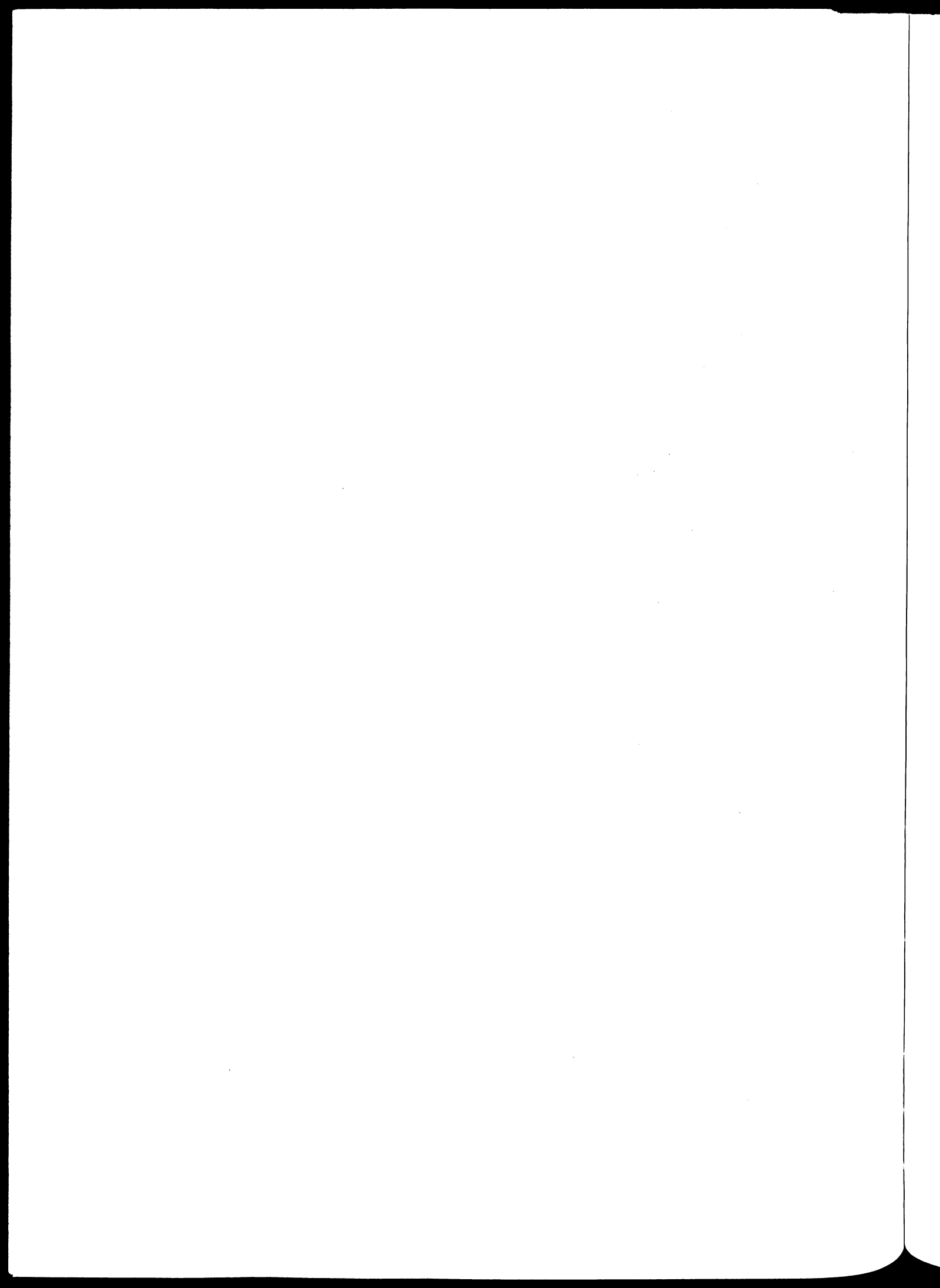
Purchaser



3. The undersigned Seller agrees that it is performing its work solely in the capacity of a Seller. It is agreed and acknowledged by the parties that the Seller is not an employee, partner, associate, agent, or joint venturer in any of the functions that it performs for the Seller. The Seller has a separate place of business at _____.
4. All products sold and delivered to locations stipulated by the Purchaser and accepted under this contract shall be scaled at a mutually agreed on location by a scaler whose scale shall be final and binding on both parties. Scaling shall be done at the following location or locations:
 1. _____
 2. _____
 3. _____
 4. _____
5. The Seller shall comply with all federal, state, county, or other government regulations or laws, including but not limited to, the Fair Labor Standards Act, the Wage and Hour Laws, the Occupational Safety and Health Act, and the Equal Opportunity laws.
6. The undersigned Seller agrees that it will be fully responsible for all wages, salaries or other remuneration to its employees, or subcontractors, and that it will be fully responsible for the filing of any forms and returns relating to the payment of such wages.

Seller

Purchaser

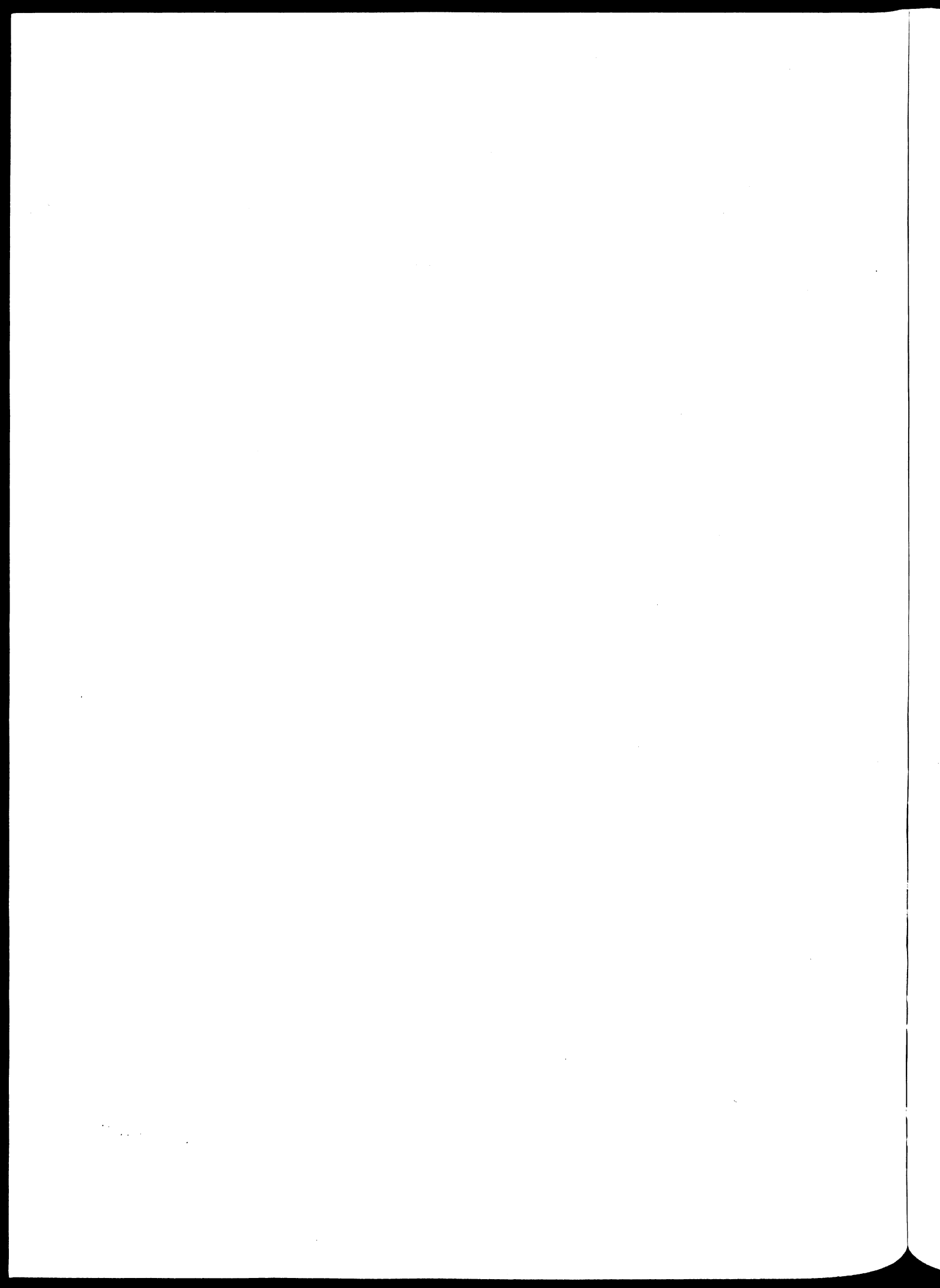


The undersigned Seller agrees that it will be solely responsible for the payment of all taxes, fees or charges of any nature, type or description due as a result of the performance of this purchase contract, including but not limited to, state and federal income taxes. Further, that it will make such payments for Social Security, Workers' Compensation, Unemployment Compensation or other governmental charges, fees or licenses as may be appropriate or necessary as a result of the performance of services and the receipt of funds for the performance of such services. The Seller shall be responsible for the filing of information returns and income tax forms.

7. The undersigned Seller agrees that it will save and hold harmless the Purchaser from any and all claims, penalties or expenses of any nature, type or description whatsoever, including reasonable attorney's fees, whether asserted by an individual, organization, or governmental agency or subdivision connected or in any way related to the performance of any services to be performed under this purchase contract. Seller shall carry Public Liability insurance in the amount of \$_____ and property damage insurance in the amount of \$_____. The parties stipulate that in fulfillment of the terms of this purchase contract the Seller warrants that he has clear and unencumbered title to the timber products sold and delivered under this contract.
8. The Purchaser agrees that it will remunerate the undersigned Seller for its product according to the schedule of payment attached hereto and made a part hereof.
9. The Purchaser takes no responsibility for supervision or direction of the performance of any of the work to be performed under this

Seller

Purchaser



purchase contract by the undersigned Seller or of its employees or subcontractors. The Purchaser further agrees that it will exercise no control over the selection and dismissal of the Seller's employees.

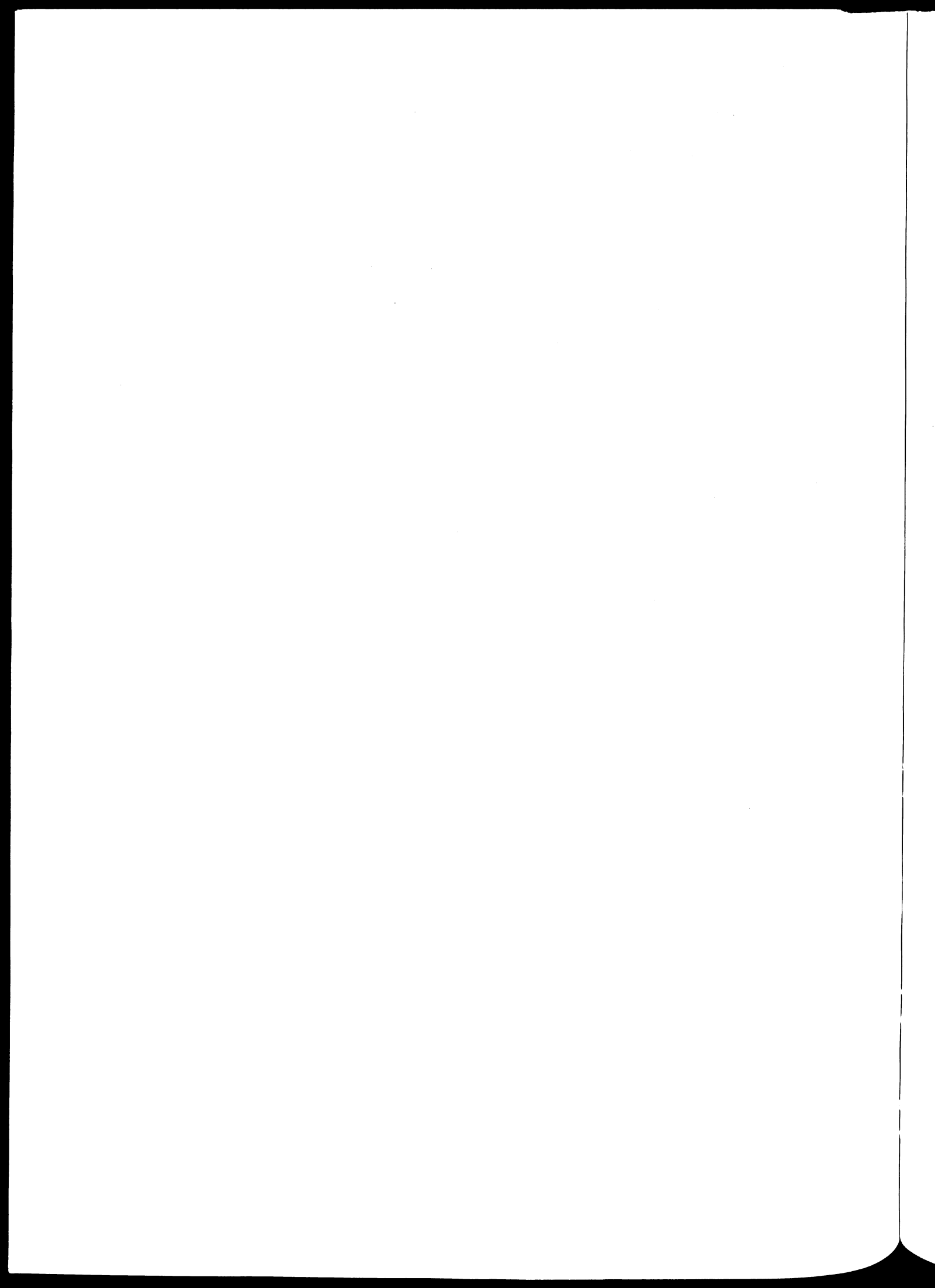
10. The undersigned Seller agrees that it will furnish all materials, labor, equipment, tools, and other items necessary for the performance of the contractual undertaking that it has assumed herein. Seller will serve as the sole employer with respect to any of the employees employed by the Seller for the performance of the work required hereunder.
11. The Seller shall not assign or sublet this Agreement without the prior written consent of the Purchaser.
12. This Contract constitutes the full and final agreement and understanding between the parties and is a complete statement of the intended terms. This Contract shall not be modified except in writing signed by both of the parties hereunder.

The time period of this Agreement shall begin on _____, 19__, and shall continue until the termination date of _____, 19__, unless earlier termination is requested by either party by _____ days written notice to the other.

IN WITNESS WHEREOF, the parties have set their hands this _____ day of _____, 19__.

Seller

Purchaser



We have read and understood this Agreement and have received a copy of this Agreement. We understand that the Seller and its operation is NOT and will NOT be covered with Workers' Compensation insurance supplied by the Purchaser.

Approved and agreed to by Seller:

Witness

By _____

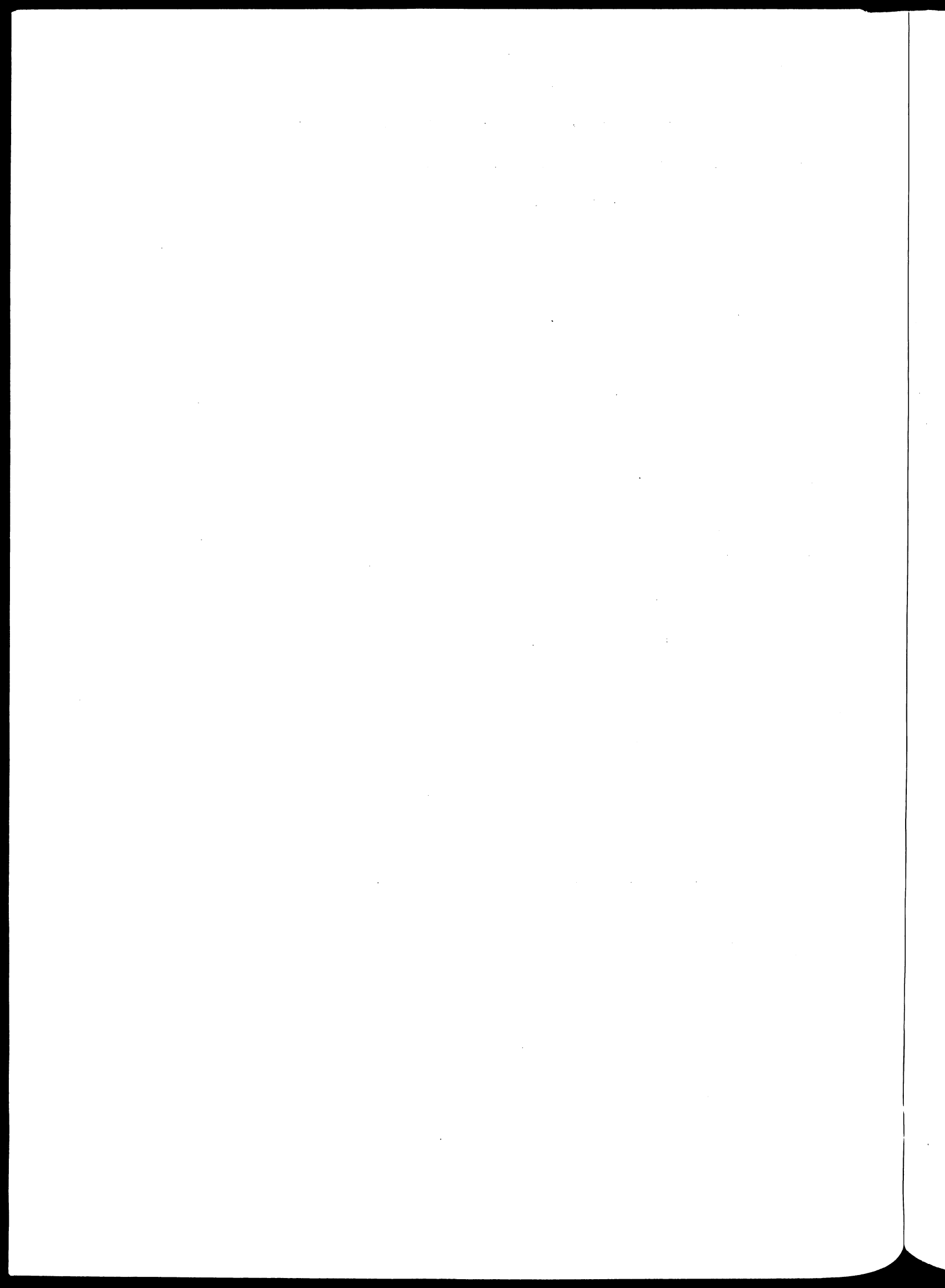
Its _____
(working title)

Approved and agreed to by Purchaser:

Witness

By _____

Its _____
(working title)



SCHEDULE OF PAYMENT

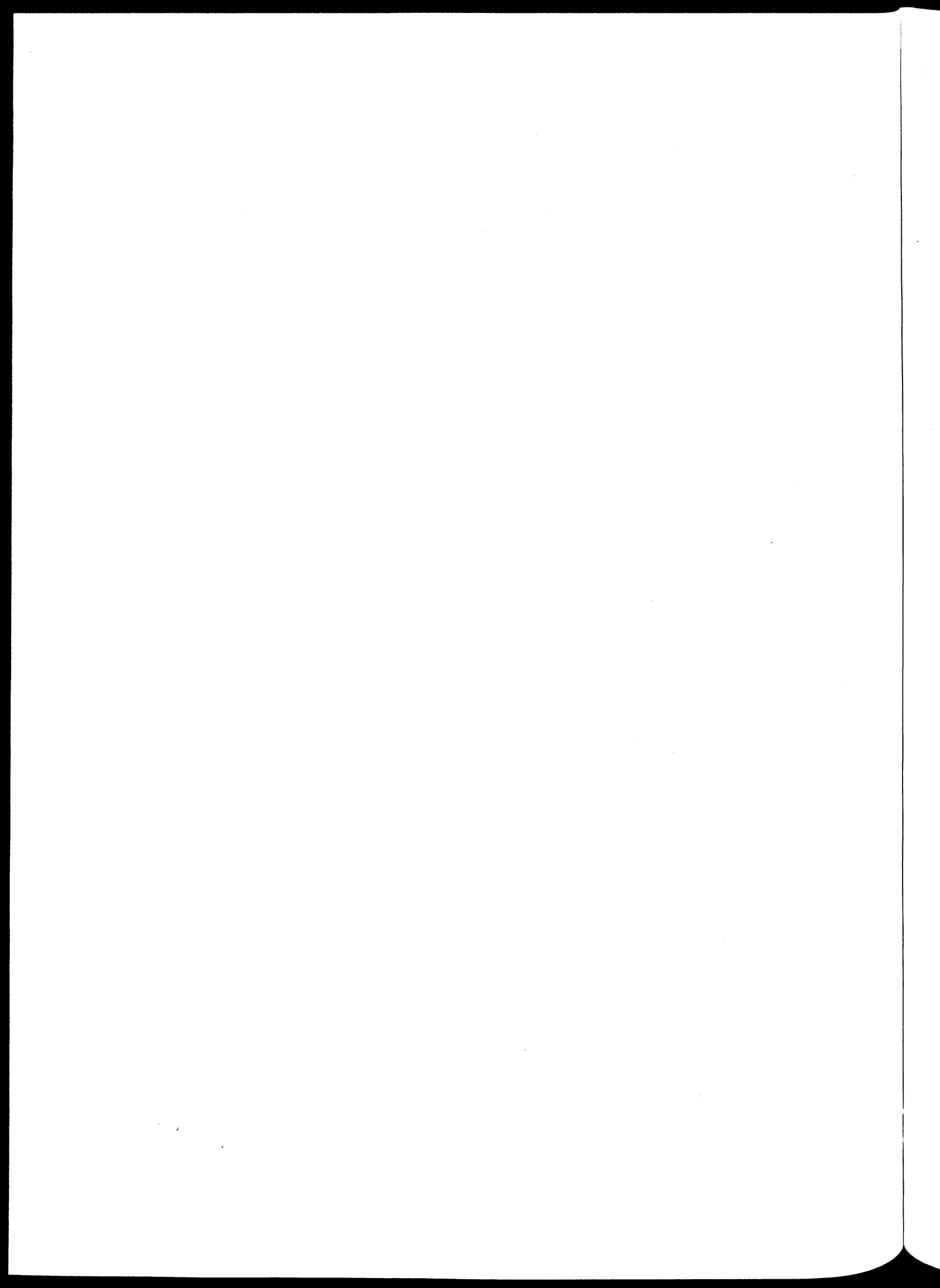
The Purchaser and the Seller hereby agree to the following schedule of payment:

<u>Species</u>	<u>Volume</u>	<u>Price</u>
----------------	---------------	--------------

Payment will be made to the Seller as follows:

Seller

Purchaser



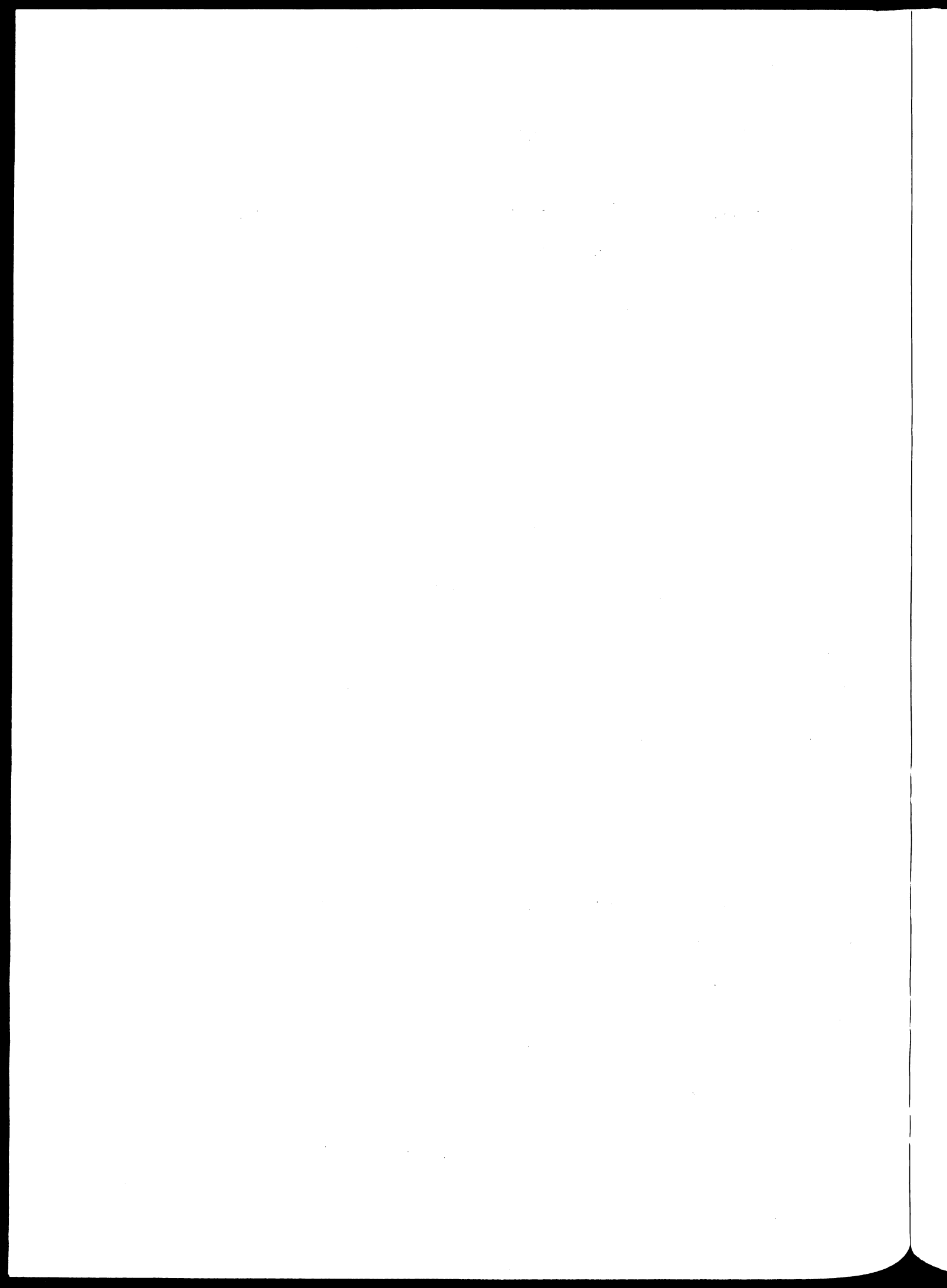
ATTACHMENT I

Products delivered under this contract shall conform to specifications as designated by the purchaser as follows:

Purchaser reserves the right to periodically publish other specifications for delivered products.

Seller

Purchaser



Appendix D
TRUCKING CONTRACT

WHEREAS, the undersigned _____, hereinafter referred to as "Independent Contractor" is prepared to perform services for _____ Company, hereinafter "Contracting Company"; and

WHEREAS, _____ Company and the Independent Contractor mutually agree that products to be hauled by the undersigned shall be performed as an Independent Contractor and not as an employee; and

WHEREAS, the parties desire to set forth their relationship in writing so that there may be no misunderstanding as to the relationship and responsibilities;

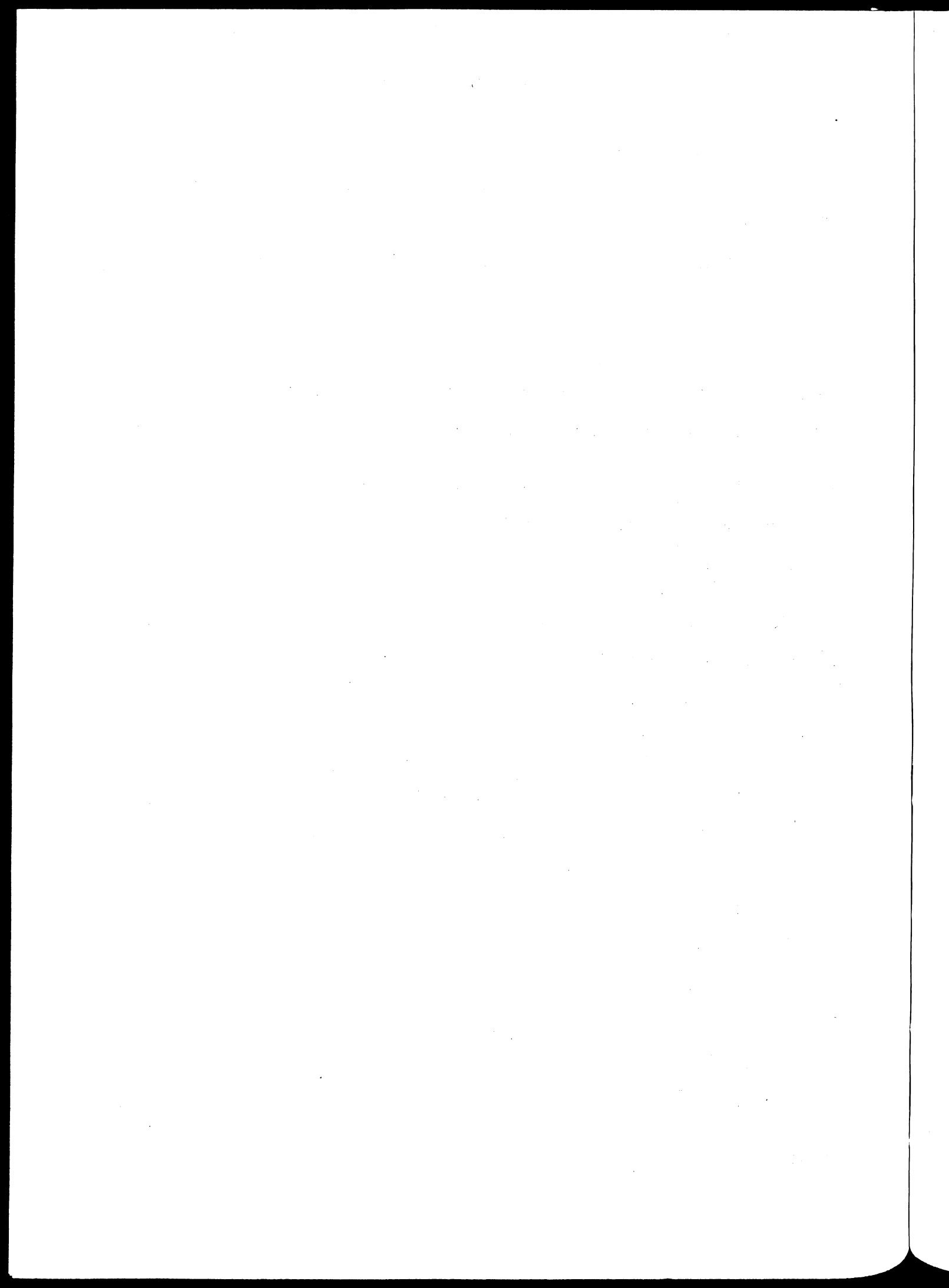
WHEREAS, in consideration of their mutual promises and covenants contained herein and the engagement by the Contracting Company of the undersigned as an Independent Contractor;

NOW THEREFORE, the parties do agree as follows:

1. The Independent Contractor is to haul timber products in accordance with Attachment I. The parties further agree that Attachment I is a part of this Agreement in all respects.
2. The terms of this Agreement shall be applicable to situations involving the hauling of timber products by the Independent Contractor.
3. The undersigned Independent Contractor agrees that it is performing its services solely in the capacity of an Independent Contractor. It is agreed and acknowledged by the parties that

Independent Contractor

Contracting Company



the Independent Contractor is not an employee, partner, associate, agent, or joint venturer in any of the functions that it performs for the Contracting Company. The Independent Contractor has a separate place of business at _____.

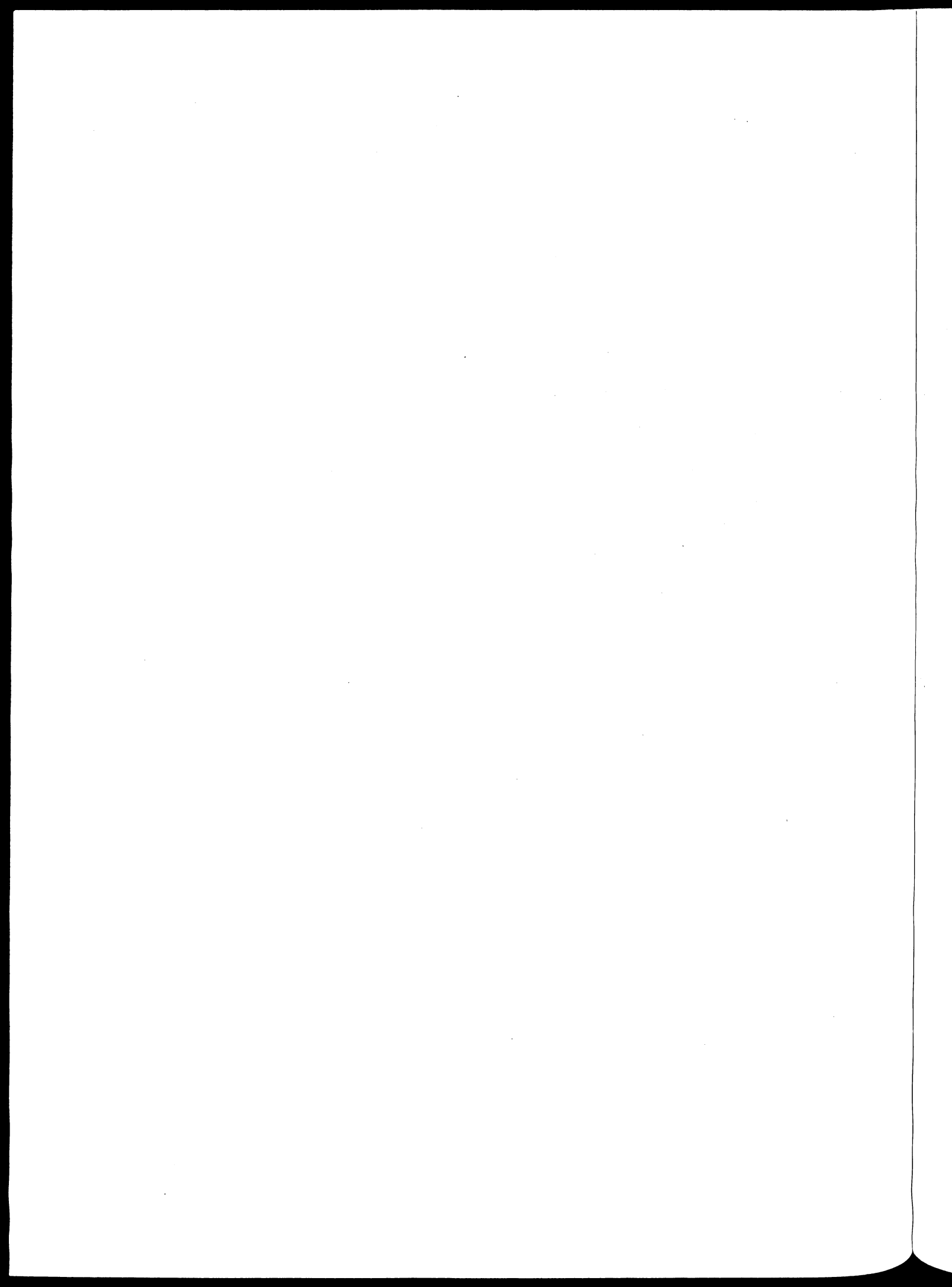
4. The Independent Contractor shall comply with all federal, state, county, or government regulations or laws, including but not limited to, the Fair Labor Standards Act, the Wage and Hour Laws, the Occupational Safety and Health Act, and the Equal Opportunity laws.
5. The undersigned Independent Contractor agrees that it will be fully responsible for all wages, salaries, or other remuneration to its employees, or subcontractors, and that it will be fully responsible for the filing of any forms and returns relating to the payment of such wages.

The undersigned Independent Contractor agrees that it will be solely responsible for the payment of all taxes, fees or charges of any nature, type, or description due as a result of the performance of the services, including but not limited to, state and federal income taxes. Further, that it will make such payments for Social Security, Workers' Compensation, Unemployment Compensation, or other governmental charges, fees, or licenses as may be appropriate or necessary as a result of the performance of services and the receipt of funds for the performance of such services.

The Independent Contractor will, prior to providing such services under this trucking Contract, furnish the Contracting Company with proof of coverage of Workers' Compensation insurance covering all employees of Independent Contractor engaged in the hauling operations under this Contract.

Independent Contractor

Contracting Company

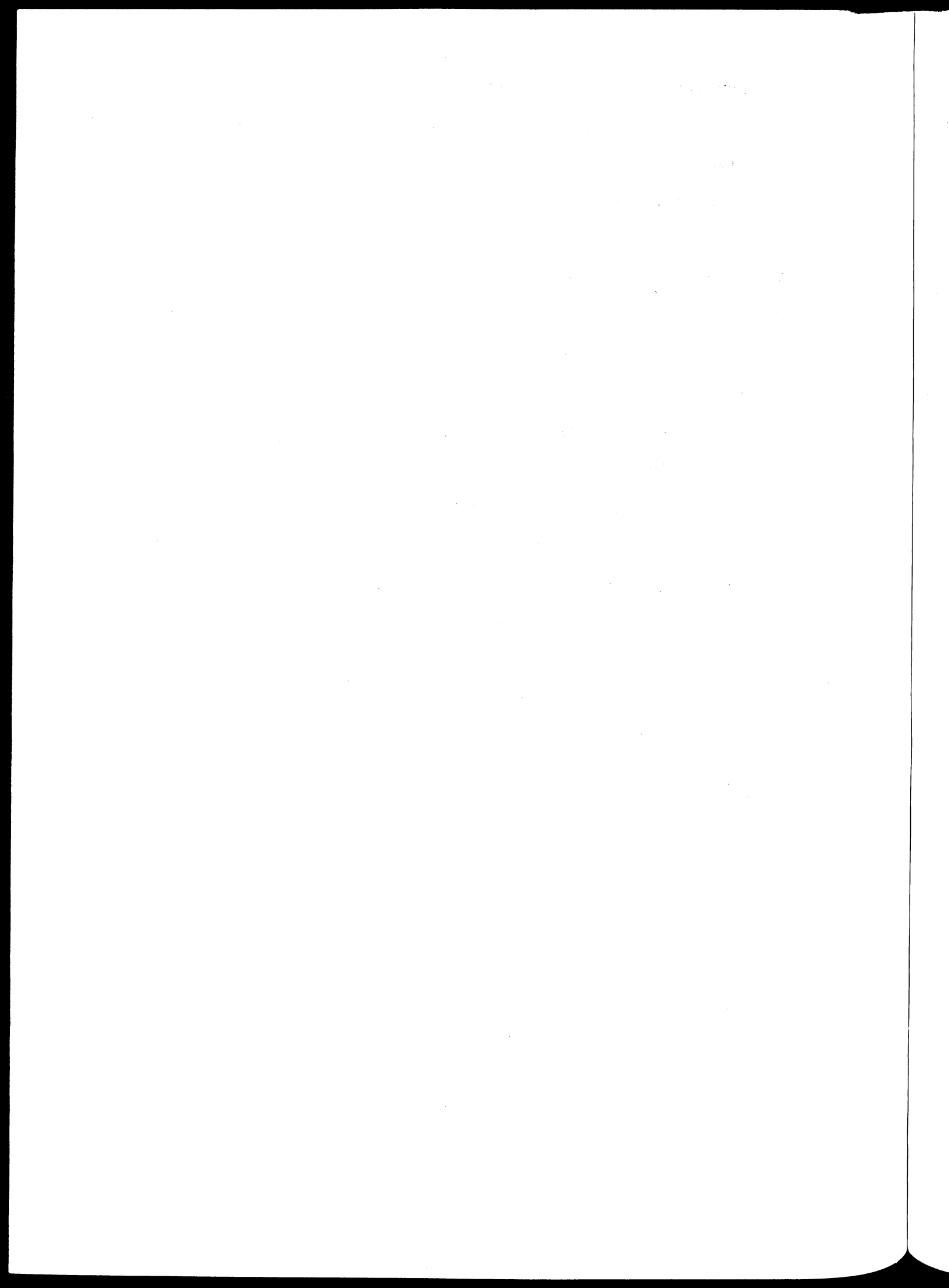


Independent Contractor's Federal Employer Identification Number is _____ and State Employer Identification Number is _____. Independent Contractor shall be responsible for the filing of its own information and income tax returns.

6. The undersigned Independent Contractor agrees that it will save and hold harmless the Contracting Company from any and all claims, penalties or expenses of any nature, type or description whatsoever, including reasonable attorney's fees, whether asserted by an individual, organization or governmental agency or subdivision connected or in any way related with the performance of any services to be performed for the Contracting Company. The Independent Contractor shall carry policies covering both vehicular operations and functions which do not relate to actual operation of the vehicle. In furtherance of this clause, Independent Contractor shall carry vehicular Public Liability insurance in the amount of \$ _____ and vehicular property damage insurance in the amount of \$ _____. The general liability policy shall be in the amount of \$ _____ for public liability and \$ _____ for property. Independent Contractor will be responsible for the same insurance requirements on the part of any of its subcontractors.
7. The Contracting Company agrees that it will remunerate the undersigned Independent Contractor for its services according to the schedule of payment attached hereto and made a part hereof.
8. The Contracting Company shall designate the points from which and to which wood it to be transported and the necessary delivery schedules. The Contracting Company agrees that the undersigned

Independent Contractor

Contracting Company

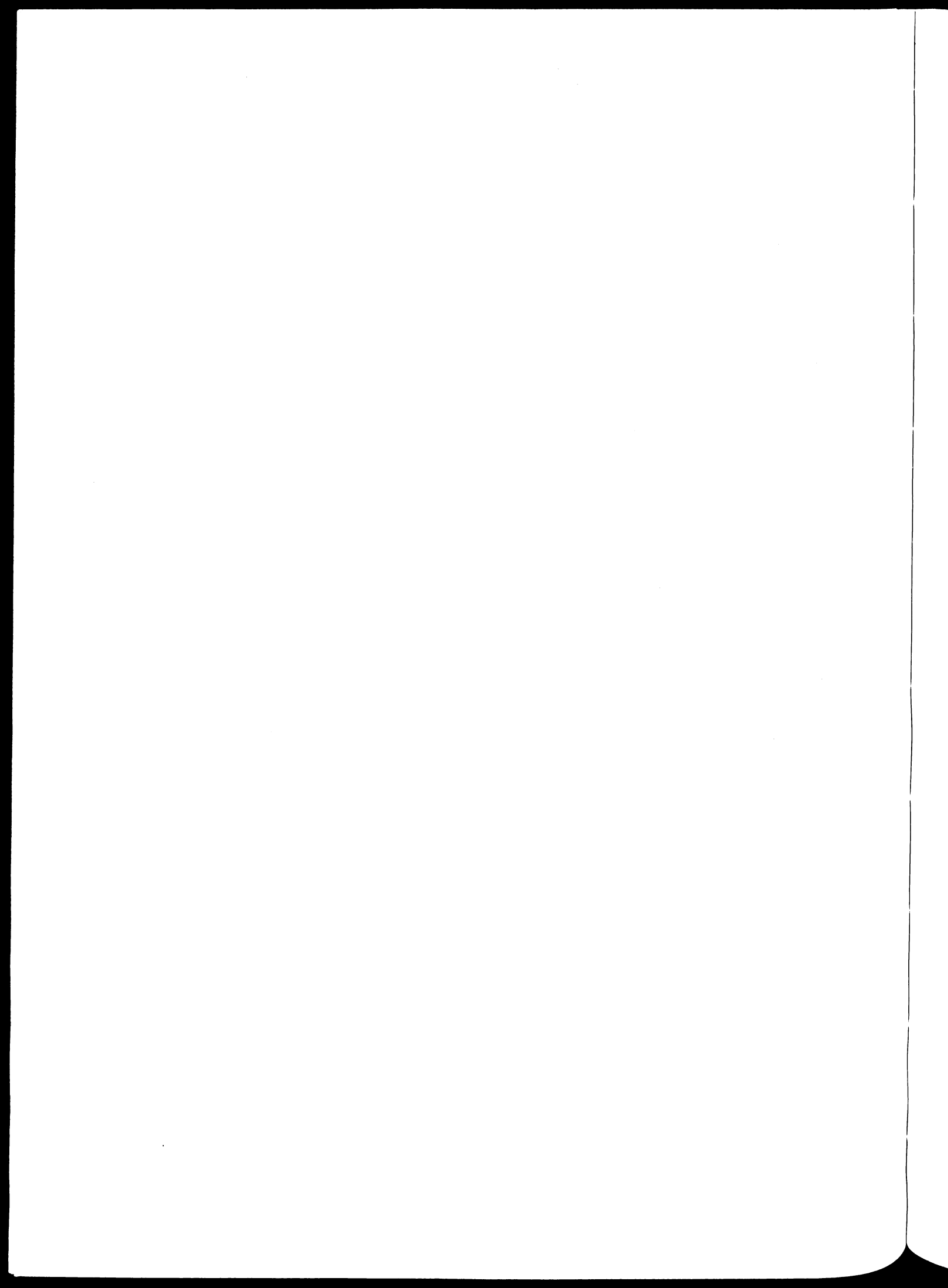


Independent Contractor shall have the sole control of the method, hours worked, time and manner of performance of the services to be performed hereunder. The Contracting Company takes no responsibility for supervision or direction of the performance of any of the services to be performed by the undersigned Independent Contractor or of its employees or subcontractors. The Contracting Company further agrees that it will exercise no control over the selection and dismissal of the Independent Contractor's employees.

9. The undersigned Independent Contractor agrees that it will furnish hauling equipment necessary for the performance of the contractual undertaking that it has assumed herein. The undersigned Independent Contractor agrees that it has a substantial economic investment in tangible assets used in performing the services hereunder. Independent Contractor will serve as the sole employer with respect to any of the employees by the Independent Contractor for the performance of the services required hereunder.
10. The Independent Contractor shall not assign or sublet this Agreement without the prior written consent of the Contracting Company.
11. The Independent Contractor shall be responsible and liable for spilled wood or loads partially dropped. This includes safe delivery of all products hauled under this agreement.
12. The Independent Contractor shall be responsible for any road damage caused by any type of improper operation by the Independent Contractor. The responsibility for road maintenance shall rest with (Independent Contractor) - (Contracting Party) (strike one).
13. This Contract constitutes the full and final agreement and understanding between the parties and is a complete statement of the

Independent Contractor

Contracting Company



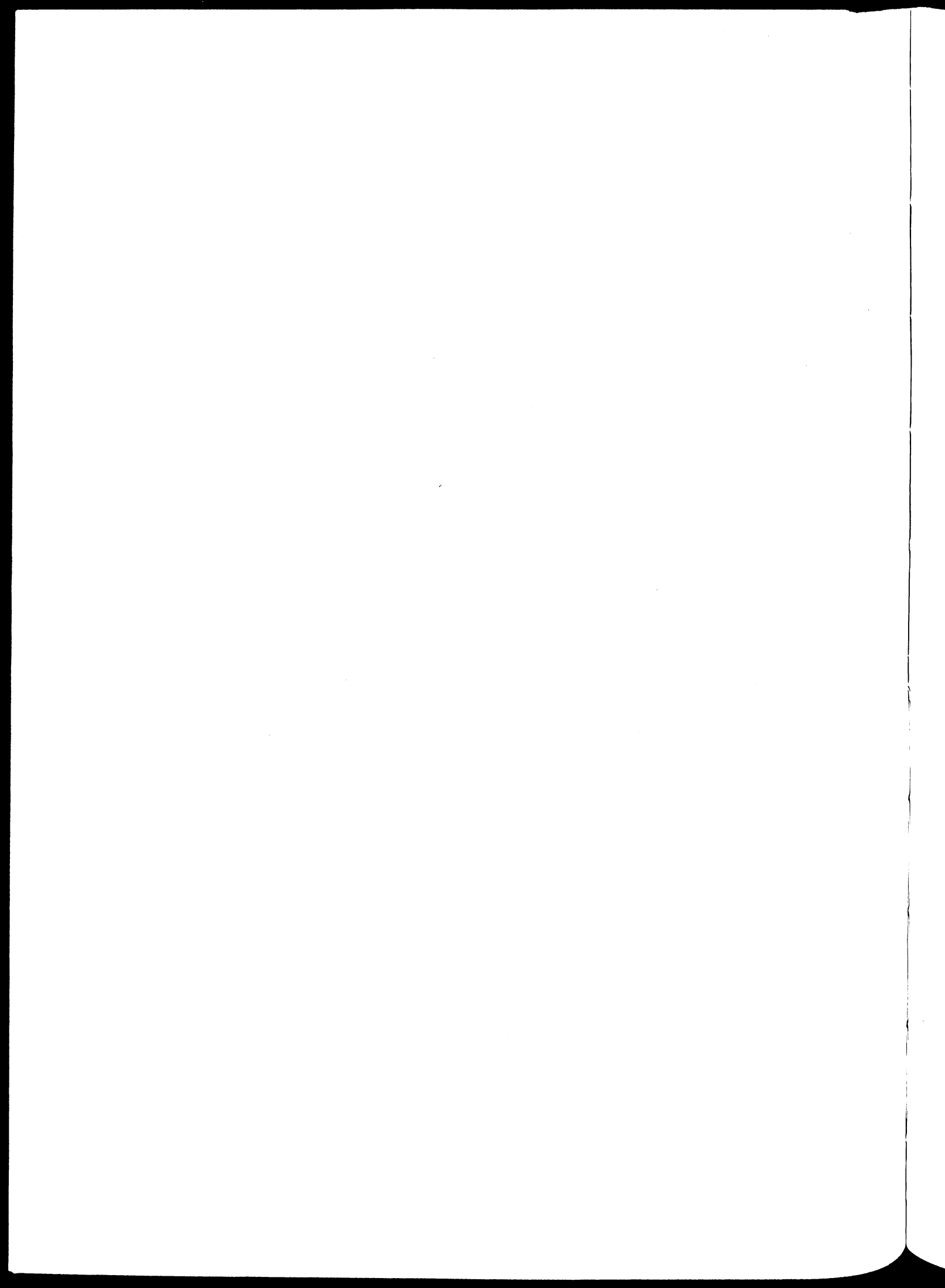
intended terms. This contract shall not be modified except in writing signed by both of the parties hereunder.

The time period of this Agreement shall begin on _____, 19__, and shall continue until the termination date of _____, 19__, unless earlier termination is requested by either party by _____ days written notice to the other.

IN WITNESS WHEREOF, the parties have set their hands this _____ day of _____, 19__.

Independent Contractor

Contracting Company



We have read and understood this Agreement and have received a copy of this Agreement. We understand that the Independent Contractor and its operation is NOT and will NOT be covered with Workers' Compensation insurance by the Contracting Company.

Approved and agreed to by Independent Contractor:

Witness

By _____

Its _____
(working title)

Approved and agreed to by Contracting Company:

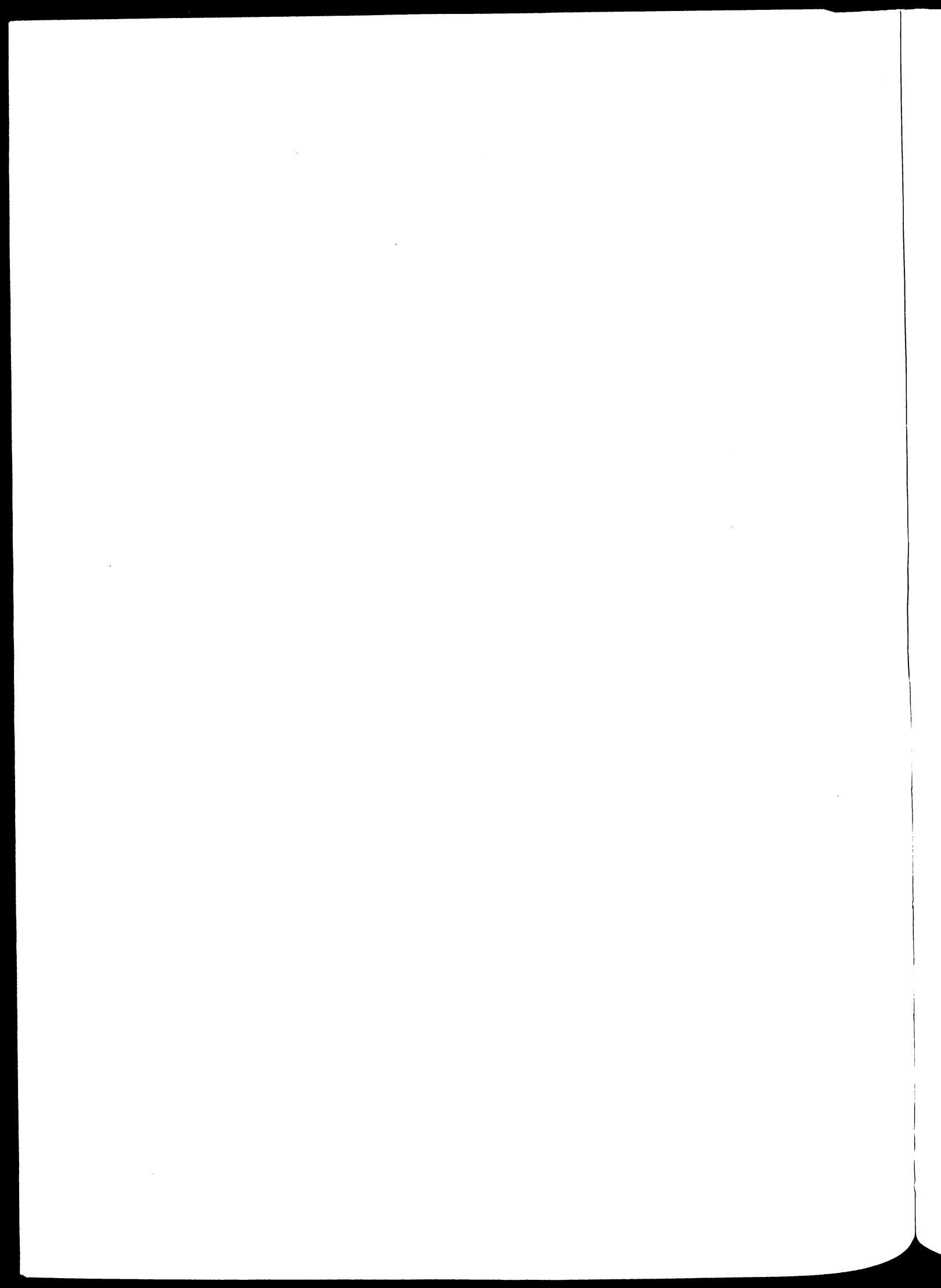
Witness

By _____

Its _____
(working title)

Independent Contractor

Contracting Company



SCHEDULE OF PAYMENT

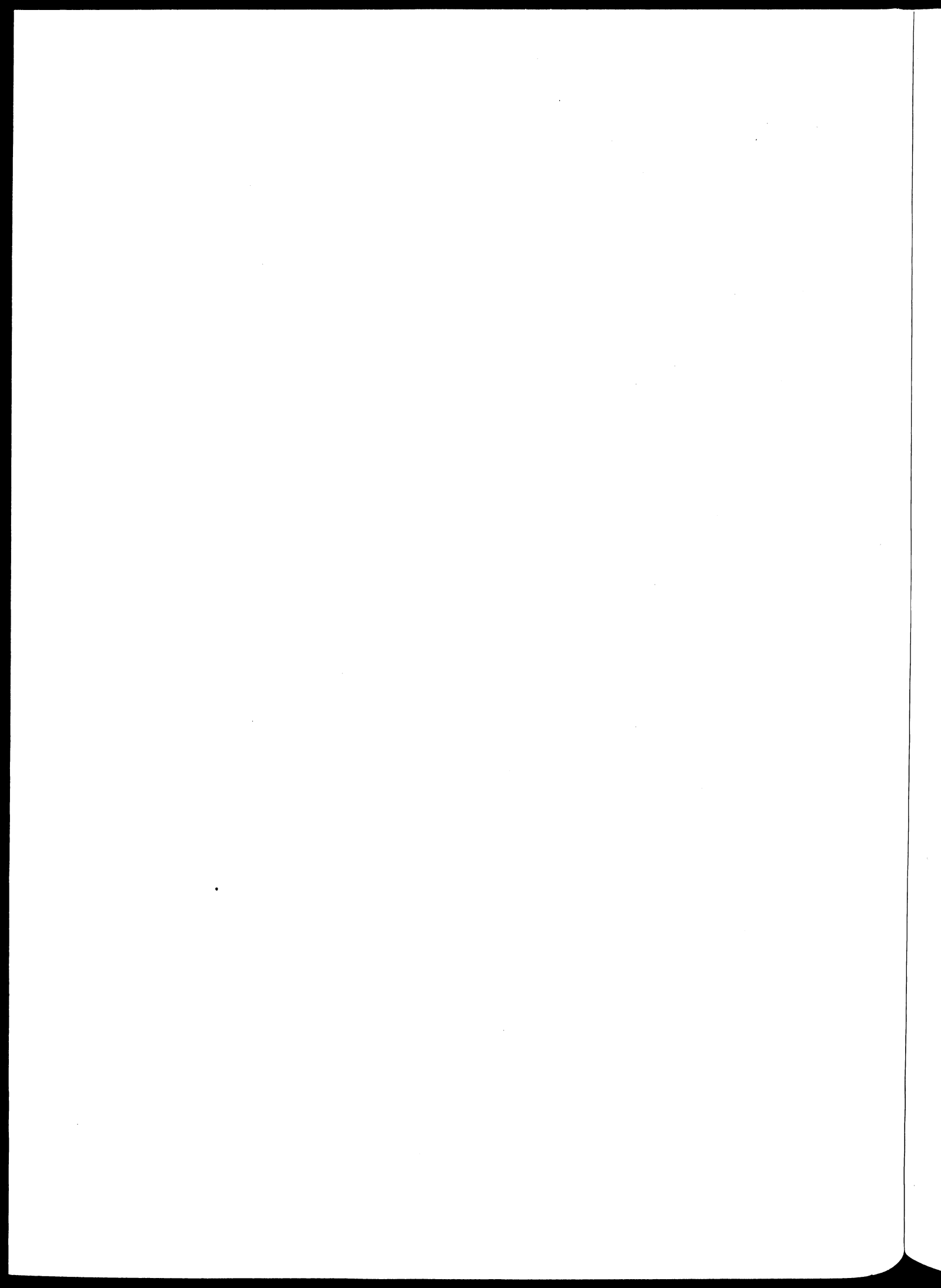
Payment will be made to the Independent Contractor on the following basis:

<u>Type of product</u>	<u>Amount per unit</u>	<u>Place of pick-up and delivery</u>	<u>Place of scale</u>
------------------------	------------------------	--------------------------------------	-----------------------

The last payment shall be held until the work has been inspected and certified as completed. This shall be accomplished within 30 days after it is claimed that the work has been completed.

Independent Contractor

Contracting Company



ATTACHMENT I

The following products shall be hauled under this contract:

Independent Contractor

Contracting Company

ADDITIONAL REFERENCES

1. Stuart, W.B. and T.A. Walbridge, Jr. 1978. Contract Terminology in the Pulpwood Industry. Industrial Forestry Operations Program. Virginia Polytechnic Institute, Blacksburg, VA. 35 pp.
2. American Pulpwood Association . 1974. All Logging Employees Are Now Covered Under the Fair Labor Standards Act. 16 pp.
3. American Pulpwood Association. (1981). 1619 Massachusetts Ave. N.W. Washington, D.C. 20036. How to Stay at Peace with Your Government.

ST. PAUL CAMPUS
LIBRARY



92

UNIVERSITY OF MINNESOTA



3 1951 D01 692 325 L