



## Operational Services Contract for SILVICONLBI-07

FREE GROWING/REGENERATION/FOREST  
HEALTH SURVEY CONTRACT

### BETWEEN:

**Silvicon Services Inc.**  
3560 Victoria Drive  
PO Box 490  
Smithers, British Columbia  
V0J 2N0

**Phone Number:** 250-847-3680  
**Fax Number:** 250-847-2530  
**Silvicon Representative:** Jay Baker  
**E-mail Address:** Jay.Baker@Silvicon.com

### AND:

**Company Name**  
**Physical & Mailing Address (including Postal Code)**  
**Phone Number:** (Area Code) Phone No ... **FAX Number:** (Area Code) Fax No  
**E-mail Address:** Company's Email Address  
**Corporate Business Number:** Company's Business Number for taxation purposes  
**WorkSafe BC Number:** WCB No

(the "Prime Contractor"), referred herein to as "the Parties".

### WHEREAS:

- A.** Silvicon Services Inc. requires the Work described in this Agreement to be carried out for its benefit.
- B.** The Contractor is prepared to do the Work.
- C.** Silvicon Services Inc. and the Contractor have agreed that the Work shall be carried out in accordance with Contract Documents.

Accordingly, the Parties agree as follows:

### ARTICLE 1: DEFINITIONS

- 1.01 In this document, the following words have the following meanings:
- a) "**Agreement**" means the agreement between the Parties as set out in the Contract Documents;
  - b) "**Amending Document**" means a Contract Modification Agreement form or another standard form of similar nature specified by Silvicon Services Inc.;
  - c) "**Assessment**" means a pre-estimate of damages incurred by Silvicon Services Inc. as a result of the Contractor's failure to perform, unsatisfactory performance or other non-compliance with the provisions of this Agreement;
  - d) "**Changed Condition**" means a materially changed physical condition at the Work Area which was not foreseen by the Contractor and which would not have been reasonably foreseen by a reasonable contractor who, before submitting its tender, conducted a thorough investigation of the work to be done to complete the Work, including a thorough inspection of the Work Area and

review of all information available from the Province to persons wishing to submit tenders, but does not include any weather conditions or natural events;

- e) "**Contract Documents**" means those documents described in Section 2.02 and the Work Progress Plan;
- f) "**Contract Price**" means the total amount payable to the Contractor for satisfactory performance of the Work, as set out in Appendix 1;
- g) "**Contractor Representative**" means a person designated pursuant to Section 5.05;
- h) "**Environmental Damage**" means:
  - i. slumping or sliding of land;
  - ii. inordinate soil disturbance; or
  - iii. other damage to the environment which Silvicon Services Inc. considers significant.
- i) "**Equitable Adjustment**" means a fair and reasonable adjustment negotiated by the Parties to;
  - i. the Contract Price; or
  - ii. the time within which the Work is to be performed;
- j) "**Fiscal Year**" means the period from April 1 to the next March 31 inclusive;
- k) "**Incorporated Material**" means any material in existence prior to the start of the Term or developed independently of this Agreement, and that is incorporated or embedded in the Produced Material by the Contractor or a Subcontractor;
- l) "**Material**" means the Produced Material and the Received Material;
- m) "**Silvicon Services Inc. Representative**" means a person appointed pursuant to Section 5.01;
- n) ("**Occupied Area**" means any Work Area, camp or rest area, or any other area occupied by the Contractor for the purposes of this Agreement;
- o) "**Payment Area**" means a portion of a Work Area as specified in the Work Progress Plan which contains a specified amount of scheduled Work;
- p) "**Performance Security**" means the security provided by the Contractor in accordance with Article 4;
- q) "**Produced Material**" means records, software and other material, whether complete or not, that, as a result of this Agreement, are produced or provided by the Contractor or a Subcontractor and includes the Incorporated Material;
- r) "**Received Material**" means records, software and other material, whether complete or not, that, as a result of this Agreement, are received by the Contractor or a Subcontractor from Silvicon Services Inc. or any other person;
- s) "**Subcontractor**" means a person, firm or corporation contracting with the Contractor to perform a part or parts of the Work, or to supply products worked to a special design according to the Agreement, but does not include one who merely supplies products not so worked;
- t) "**Shortfall**" means the difference between total Contract Price and the amount paid to the Contractor for Work satisfactorily completed;
- u) "**Term**" means the period of time this Agreement is in force pursuant to Article 3;
- v) "**Work**" means all labour, supervision, administration, materials, transportation, supplies, tools, equipment and such other services and materials necessary or desirable to perform the services described in the Contract Documents, and includes any services which are not expressly described, but which are nevertheless necessary for the proper execution of the work;
- w) "**Work Area**" means the area shown outlined on the attached maps;
- x) "**Work Day**" means every day of the week except Saturday, Sunday and statutory holidays; and

y) "**Work Progress Plan**" means the plan developed on a form approved by Silvicon Services Inc. and submitted to the Silvicon Services Inc. Representative for approval which outlines the scope, timing, location and any other requirements of the Work.

- 1.02 If any of the words in Section 1.01 are used in any other Contract Document, they have the same meaning as in this document unless the context dictates otherwise.
- 1.03 Words or abbreviations which have well known technical or trade meanings are used in the Contract Documents in accordance with those recognized meanings.
- 1.04 The headings of the clauses of this Agreement have been inserted for reference only and do not define, limit, alter or enlarge the meaning of any provision of this Agreement.

## **ARTICLE 2: CONTRACT DOCUMENTS AND MODIFICATIONS**

### **Contract Documents**

2.01 The attached schedules are applicable to and form part of this Agreement:

<b>Schedule</b>	<b>Title</b>
Schedule "A"	Services
Schedule "B"	Contract payment
Schedule B1	Rates of Payment
Schedule "C"	Insurance
Schedule "D"	Safety Conditions Schedule
Schedule "E"	Prime Contractor Agreement
Schedule "F"	Subcontracting

Tender Offer Form  
Tender Envelope  
Appendix 1 - Contract Schedule  
Appendix 2 - Overview map

### **Amending Documents**

2.02 No modification of this Agreement is effective unless it is in writing and signed by, or on behalf of, the Parties.

### **Interpretation**

- 2.03 Any reference in the Contract Documents to a manual or a form means a manual or form published by or for Silvicon Services Inc. and includes every amendment of such manual or form and any manual or form published from time to time in substitution for them or replacement of such manual or form.
- 2.04 In the event of a conflict between the Contract Documents, the terms of this Document supersede all other Documents. In the event of a conflict between alike Contract Documents of different dates, the Document of later date prevails.

## **ARTICLE 3: TERM OF CONTRACT AND COMMENCEMENT OF WORK**

3.01 The Term of this Agreement is from **September 29, 2017 to February 28, 2018** inclusive, and work shall proceed in accordance with the Work Progress Plan.

- 3.02 The Contractor shall not conduct any Work until Silvicon Services Inc. notifies the Contractor to commence work.
- 3.03 The Contractor shall commence Work within **FIVE (5)** calendar days from the date specified in the Notice to Commence Work and regardless of the date of execution or delivery of this Agreement, the Contractor must provide the Services during the Term.
- 3.04 Time is of the essence in this Agreement and, without limitation, will remain of the essence after any modification or extension of this Agreement, whether or not expressly restated in the document effecting the modification or extension.

#### **ARTICLE 4: CONTRACT PERFORMANCE SECURITIES**

- 4.01 Upon request of Silvicon Services Inc., the Contractor shall furnish Performance Security in the amount specified by and in a form and manner acceptable to Silvicon Services Inc. as security for the faithful performance by the Contractor of all Work.
- 4.02 Silvicon Services Inc. may retain any Performance Security until all Work has been completed in accordance with this Agreement. The Performance Security is subject to forfeiture, at the discretion of Silvicon Services Inc., if the Contractor fails to perform or to comply with this Agreement.
- 4.03 If the Contractor fails to perform or comply with this Agreement, Silvicon Services Inc. may, in addition to terminating the Agreement and claiming the Performance Security, pursue any other remedies available to it under this Agreement or the laws of the Province of British Columbia.
- 4.04 Should the Parties agree to renew this Agreement for a further term, Silvicon Services Inc. shall calculate the Contract Performance Security for the renewed term as follows:
  - a) where the Tender documents specified the Contract Performance Security as a fixed dollar amount, the amount shall remain unaltered unless the contract value for the renewed term varies by more than 10% of that of the preceding term, in which case the security requirement shall be varied up or down by the same percentage.
  - b) where the Tender documents specified the Contract Performance Security as a percentage of the total contract value, the amount for the renewed term shall be determined by multiplying that percentage on the renewed contract value, except that where this amount is between 90 and 110% of the preceding term's amount, the Contract Performance Security requirement shall remain unaltered.

Should the amount of Contract Performance Security decline by more than 10% between two terms, Silvicon Services Inc. shall return the amount in excess of 10% following, in its sole discretion, satisfactory performance of the Contractor in the preceding term and in accordance with provisions specified elsewhere for the return of performance security. Where the amount of Contract Performance Security increases by more than 10% between two terms, Silvicon Services Inc. shall inform the Contractor in writing of the increased amount and the Contractor shall deliver this amount in an acceptable form at least ten Work Days prior to the commencement of work in the forthcoming term.

#### **ARTICLE 5: Party Representatives**

##### **Silvicon Services Inc. Representative**

- 5.01 Silvicon Services Inc. shall appoint a Silvicon Services Inc. Representative who shall have full authority to act on behalf of Silvicon Services Inc. in connection with this Agreement.
- 5.02 Upon commencement of this Agreement, Silvicon Services Inc. shall notify the Contractor of the name of the Silvicon Services Inc. Representative.
- 5.03 Silvicon Services Inc. may substitute a Silvicon Services Inc. Representative at any time, and shall

immediately notify the Contractor of the change.

- 5.04 The Silvicon Services Inc. Representative may require the Contractor to do anything necessary to satisfy the Silvicon Services Inc. Representative that the Work is being performed in accordance with the Contract Documents.

### **Contractor Representative**

- 5.05 The Contractor shall appoint a Contractor Representative fluent in English, who shall:
- (a) have full authority to act on behalf of the Contractor in connection with the Work and the Agreement; and,
  - (b) be available to the Silvicon Services Inc. Representative, when requested, and be present at all times at any site where the Work is carried out.
- 5.06 Upon entering into this Agreement, the Contractor shall notify Silvicon Services Inc. of the name, address and telephone number of the Contractor Representative appointed pursuant to Section 5.05.
- 5.07 The Contractor shall not substitute a Contractor Representative without the written consent of the Silvicon Services Inc. Representative.
- 5.08 If, in the reasonable opinion of the Silvicon Services Inc. Representative, the Contractor Representative is not suitably experienced or is unable to properly supervise the Work or communicate with the Silvicon Services Inc. Representative, then the Contractor shall, upon receipt of written notice from the Silvicon Services Inc. Representative, replace that representative and immediately notify Silvicon Services Inc. of that change.
- 5.09 All Work carried out by the Contractor or the Subcontractor must be under the direct and continuous supervision of the Contractor or the Contractor Representative.

## **ARTICLE 6: STANDARDS OF PERFORMANCE AND WORK PROGRESS**

### **Work Progress Plan**

- 6.01 The Contractor Representative shall meet with the Silvicon Services Inc. Representative before the commencement of Work to:
- (a) inspect the Work Area, and
  - (b) review the Contract Documents and work performance requirements.
- 6.02 The Work Progress Plan may divide the scheduled Work into Payment Areas. Where no Payment Areas are approved the entire Work Area shall be considered to be one Payment Area.
- 6.03 The Work shall proceed in accordance with the Work Progress Plan.

### **Standards of Performance**

- 6.04 The Contractor acknowledges it has satisfied itself to:
- (a) the nature and magnitude of the Work; and
  - (b) the general character, quality and quantity of the equipment and materials required to execute and complete the Work.

Any failure by the Contractor to discover matters which affect or could affect the Work does not relieve

the Contractor from its obligations under this Agreement or otherwise affect the Contract Price.

- 6.05 The Contractor shall at all times exercise the standard of care, skill and diligence normally exercised and observed by persons engaged in the performance of activities similar to the Work.

### **Continuity and Suspension of Work**

- 6.06 The actual date the Work may commence is dependent upon the weather and completion of the Work Progress Plan. Once commenced, Work shall be continuous except as provided for in Section 6.09.
- 6.07 If Silvicon Services Inc. reasonably decides that weather or other conditions make it unsuitable for Work to proceed, it may suspend operations for a specified or an indefinite period, and it may require the Contractor remain available for up to five (5) consecutive Work Days to resume work as specified by Silvicon Services Inc.. If the suspension exceeds twenty-four (24) hours the Parties shall negotiate an Equitable Adjustment to the Contract Price to compensate the Contractor for reasonable and substantiated out-of-pocket costs incurred during the suspension.
- 6.08 In the event operations are suspended under Section 6.07, the Term may be extended by a length of time agreed to by the Parties.
- 6.09 If Silvicon Services Inc., having suspended Work pursuant to Section 6.07, does not permit Work to resume within five (5) Work Days, either Party may, by giving written notice to the other Party, terminate this Contract without penalty. Neither Party is liable for compensation of any kind arising out of the suspension of operations. Payment shall be made for all Work satisfactorily performed before the suspension of Work.
- 6.10 A suspension pursuant to Section 6.07 to be effective must be in writing and delivered to the Contractor by a method provided for in Section 15.06.

## **ARTICLE 7: INDEMNIFICATION AND INSURANCE**

### **Indemnity**

- 7.01 You must indemnify and save harmless Silvicon Services Inc. and its employees and agents from any loss, claim (including any claims of infringement of third party intellectual property rights), damage award, action, cause of action, cost or expense that Silvicon Services Inc. or any of its employees or agents may sustain, incur, suffer or be put to at any time either before or after this Agreement ends, (each a "Loss"), to the extent the Loss is directly or indirectly caused or contributed to by:
- (a) any act or omission by you or your agents, employees, officers, directors or Subcontractors in connection with this Agreement; or
- (b) any representation or warranty by you being or becoming untrue or incorrect.
- 7.02 Neither Silvicon Services Inc. nor its Representative in charge, its agents, authorized representatives, or employees are personally liable for any act performed in the discharge of any duty imposed or in the exercise of any power or authority conferred upon them by, or within the scope of, the Agreement if it can be demonstrated that all reasonable care was exercised in the conduct of the operations; in all such matters these persons act solely as agents and representatives of Silvicon Services Inc..
- 7.03 Neither Silvicon Services Inc. nor any of its employees, authorized representatives, or agents are liable to the Contractor or the Contractor's employees or agents for any injury, loss, or damage however occasioned to any of them or their equipment or livestock while being transported or conveyed in any vessel, boat, aircraft owned or operated by Silvicon Services Inc., and the Contractor shall not undertake claims against Silvicon Services Inc., its employees, authorized representatives, or agents to recover any such injury, loss or damage either on its own behalf or on behalf of its employees or agents. The Contractor shall indemnify and save harmless Silvicon Services Inc., its employees,

authorized representatives, or agents from any such claims initiated by the Contractor's employees, subcontractors, servants, or agents.

### **Insurance**

7.04 During the Term, the Contractor shall pay and maintain insurance coverage as specified in writing by Silvicon Services Inc. from time to time.

## **ARTICLE 8: PROTECTION OF WORK AND PROPERTY**

### **General**

8.01 The Contractor shall protect Silvicon Services Inc's property from damage and is responsible for damage which may arise as the result of the Contractor's operations under the Agreement, except damage which occurs as a result of the acts or omissions of Silvicon Services Inc. or its other contractors, agents and employees.

### **Protection of the Environment**

8.02 If the Contractor encounters circumstances such as weather conditions or site factors where the Contractor knows or should reasonably know that proceeding with the Work may, directly or indirectly, cause Environmental Damage, the Contractor shall:

- (a) immediately suspend such Work;
- (b) immediately advise Silvicon Services Inc. of the suspension and circumstances;
- (c) not proceed with such Work until Silvicon Services Inc. so instructs; and
- (d) upon Silvicon Services Inc's instruction to proceed with such Work, do so in accordance with Silvicon Services Inc's instructions.

8.03 The Contractor shall not be deemed to be in breach of this Agreement for suspending Work pursuant to Section 8.02.

### **Fire Protection**

8.04 The Contractor shall:

- (a) take every precaution to prevent unintentional fire from occurring on or about the Work Area,
- (b) ensure that no person burns any debris on or about the Work Area unless authorized under a Burning Reference Number issued by the Ministry of Forests, Lands and Natural Resource Operations, Wildfire Management Branch, and
- (c) ensure that, with respect to smoking,
  - (i) no person smokes except in areas that are free of or fully cleared of all flammable material,
  - (ii) no burning material falls outside cleared areas, and
  - (iii) all burning material is completely extinguished before leaving cleared areas.

## **ARTICLE 9: COMPLIANCE WITH THE LAW**

9.01 This Agreement is governed by, and is to be interpreted and construed in accordance with, the laws of the Province of British Columbia, including, but not limited to, the *Employment Standards Act* and its Regulations.

9.02 The Contractor shall comply with, and must ensure that any Subcontractors comply with, all applicable occupational health and safety laws in relation to the performance of the Contractor's obligations under

this Agreement, including the *Workers Compensation Act* in British Columbia or similar laws in other jurisdictions.

9.03 Without limiting Section 9.02, the Contractor:

(a) may be considered the "Prime Contractor" for the Work, as described in the attached Safety Conditions Schedule, and as such shall enter into a Prime Contractor Agreement and carry out the duties as described therein;

(b) shall be solely responsible for safety at the Work Area;

(c) shall, at its own expense, provide the necessary WorkSafe BC compensation coverage for itself, all workers and any shareholders, directors, partners or other individuals employed or engaged in the performance of the Work and shall ensure all approved Subcontractors obtain WorkSafe BC coverage;

(d) if the Contractor or its Subcontractors do not have the benefit of mandatory workers compensation coverage under the *Workers Compensation Act*, then the Contractor shall ensure that it and its Subcontractors apply for and obtain Personal Optional Protection under the *Workers Compensation Act*;

(e) shall be responsible for and pay for all fines, assessments, penalties, and levies made or imposed under the *Workers' Compensation Act* and regulations relating in any way to the Work;

(f) upon request, provide Silvicon Services Inc. with evidence of compliance with Section 9.03 (c) and (d);

(g) shall promptly pay all persons employed or engaged in the execution of the Work; and

(h) shall obtain all licences and permits required by law to carry out the Work, unless obtained by Silvicon Services Inc. and provided to the Contractor before commencement of the Work, and provide Silvicon Services Inc. with proof of having obtained those licences or permits.

9.04 Nothing in this Agreement shall relieve the Contractor from its responsibility to comply with all applicable provisions of the *Forest & Range Practices Act* and its regulations.

## **ARTICLE: 10 CHANGED CONDITION**

10.01 If a Changed Condition occurs during the course of the Work, the following applies:

(a) The Parties shall immediately advise each other of particulars of the Changed Condition and the Contractor Representative and the Silvicon Services Inc. Representative shall meet to attempt to deal with the condition.

(b) If the Changed Condition is so substantial that amending the Agreement to deal with the change would change the essential nature of the Work, then either Party may elect not to proceed with the Work any further and the contract shall be brought to an end. If either Party so elects, the Contractor shall be entitled to receive payment for any Work which the Contractor has satisfactorily completed, and shall be entitled to no further payment.

## **ARTICLE 11: INSPECTION AND ACCEPTANCE**

### **Request for Inspection and Acceptance**

11.01 The Contractor shall, upon completing all Work within a Payment Area, promptly request that Silvicon Services Inc. inspect and determine the acceptability of the Work. The request must be in writing, may take the form of an invoice, and, must be delivered to Silvicon Services Inc. by a method provided for in Section 15.06.

### **Inspection by Silvicon Services Inc.**

11.02 Silvicon Services Inc. shall, following receipt of the Contractor's request for inspection and acceptance,



promptly inspect and determine the acceptability of the Work performed in the Payment Area. Work shall be inspected in accordance with the Contract Documents. Silvicon Services Inc. is not obliged to make any determination of acceptability before receiving the written request.

- 11.03 The Contractor is encouraged, but not required, to observe inspections while they are underway.
- 11.04 Silvicon Services Inc. shall provide the Contractor with a copy of inspection results.
- 11.05 Silvicon Services Inc. reserves the right to inspect, at all times during the Term and without notice to the Contractor, any Work performed.
- 11.06 The Contractor shall pay Silvicon Services Inc., on demand, all direct and indirect additional inspection costs incurred because Payment Areas were not fully completed by the time specified in the Contractor's request for inspection and acceptance.
- 11.07 Inspections are conducted by Silvicon Services Inc. in order to determine compliance with the provisions of this Agreement and to provide the basis for calculating the payment due. These inspections are conducted for the sole benefit of Silvicon Services Inc., and do not release the Contractor from the responsibility of providing quality control measures to assure that the Work strictly complies with this Agreement.

### **Re-Inspection**

- 11.08 If the results of an inspection are unacceptable to the Contractor, it may, if it does so within three (3) Work Days of receiving the inspection results, request Silvicon Services Inc. re-inspect the Work.
- 11.09 If the Contractor requests a re-inspection of the Work, Silvicon Services Inc. shall perform the re-inspection at a time mutually agreed to by the Parties, but in any event no later than ten (10) Work Days after receiving the request.
- 11.10 The results of the re-inspection shall be used to determine payment and shall be final and binding.
- 11.11 The Contractor shall pay Silvicon Services Inc's costs of the re-inspection only if the difference in Work quality between the original inspection and the re-inspection is less than ten percent (10%) of the original inspection results.
- 11.12 If Silvicon Services Inc. bears the costs of the re-inspection, it shall also pay the Contractor, if they are present for the entire re-inspection, the sum of two hundred and fifty dollars (\$250.00) for time spent re-inspecting.

## **ARTICLE 12: MEASUREMENT AND PAYMENT**

### **Payment**

- 12.01 If the Contractor complies with this Agreement, Silvicon Services Inc. shall pay the Contractor for all Work at the rates [inclusive of taxes paid or payable by the Contractor to a supplier but exclusive of any applicable Provincial Sales Tax (PST) that the Contractor is required to charge Silvicon Services Inc. as a taxable transaction and the Goods and Services Tax (GST)] and times described in Appendix 1 and we are not obliged to pay you more than the maximum amount or dollar limit specified in Appendix 1.
- 12.02 Expenses, if payable, will be exclusive of GST or other applicable tax paid or payable to the extent the Contractor is entitled to claim credits (including GST input tax credits), rebates, refunds or remissions of the tax from the relevant taxation authorities.
- 12.03 Silvicon Services Inc. will pay any applicable taxes payable under law or agreement with the relevant taxation authorities. Invoices must show the calculation of any applicable taxes (excluding taxes paid

directly by the Contractor to a supplier and which were inclusive in the bid price) to be paid as a separate line item and expenses must be listed chronologically, be in reasonable detail and with dates of all expenses claimed with receipts or copies of receipts, where applicable, attached.

- 12.04 Our obligation to pay money to you is subject to the *Financial Administration Act*, which makes that obligation subject to an appropriation being available in the fiscal year of Silvicon Services Inc. during which payment becomes due.
- 12.05 Unless otherwise specified in this Agreement, all references to money are to Canadian dollars.

#### **Payment Initiation**

- 12.06 Silvicon Services Inc. shall upon acceptance of the Work within a Payment Area, promptly initiate a payment.

#### **Holdback**

- 12.07 Silvicon Services Inc. is not obliged to advance to the Contractor more than ninety percent (90%) of the calculated amount of any payment. The ten percent (10%) holdback shall be retained for forty (40) calendar days after the completion, or earlier termination, of all Work and interest is not payable on the amount held back by Silvicon Services Inc.
- 12.08 Silvicon Services Inc. is authorized, but not obliged, to apply the holdback funds as follows:
- (a) firstly, to any unpaid government agencies;
  - (b) secondly, to the Contractor's and Subcontractor's unpaid workers, Subcontractors and material suppliers; and
  - (c) thirdly, as security for the correction of any breach of, or for payment of any Assessment provided for in, this Agreement.

#### **Payment for Part Performance**

- 12.09 If this Agreement expires or is terminated before completion of the Work, Silvicon Services Inc. shall only pay for that portion of the Work completed to the satisfaction of Silvicon Services Inc. before the said expiration or termination.

#### **Method of Measurement**

- 12.10 All linear and area measurements under this Agreement are measured on the horizontal plane, unless specified otherwise in an attached Schedule.

#### **Remeasurements**

- 12.11 If the calculation of a payment depends upon the area completed, and if the Contractor believes the area used in calculating that payment is incorrect, the Contractor may request Silvicon Services Inc. remeasure the Payment Area. The request shall be delivered in writing to Silvicon Services Inc., within three (3) Work Days of the Contractor receiving a copy of the payment calculation for the Payment Area in question.
- 12.12 If Silvicon Services Inc.'s remeasurement indicates that the originally specified area was correct within five percent (5%), the original measurement will be used and the Contractor will pay for the cost of the remeasurement. If the difference between measurements exceeds five percent (5%), payment will be based on the second measurement without charge for the remeasurement.

#### **Appropriation**

- 12.13 Despite any other provision of this Agreement, Silvicon Services Inc.'s obligation to pay the Contractor, pursuant to this Agreement, is subject to:
- (a) the Legislative Assembly of the Province of British Columbia having provided sufficient funds to enable Silvicon Services Inc., in any Fiscal Year or part thereof, to make payment pursuant to this Agreement when it is due; and
  - (b) Treasury Board not having controlled or limited expenditure of any funds.

## **ARTICLE 13: NON-COMPLIANCE AND TERMINATION**

### **Termination by Silvicon Services Inc.**

- 13.01 Silvicon Services Inc. may, at its sole discretion, terminate this Agreement at any time, and no claim may be made by the Contractor for any losses occasioned by that termination if the termination:
- (a) occurs before Silvicon Services Inc. notifies the Contractor to commence Work;
  - (b) is caused by an Act of God, unsuitable weather, natural disaster, withdrawal of labour in labour disputes, or any other unforeseeable causes over which the Province has no direct control; or
  - (c) is caused by an Event of Default.

### **Mutual Termination**

- 13.02 This Agreement may be terminated at any time by the mutual consent of the Parties.

### **Contract Performance Security**

- 13.03 If Silvicon Services Inc. terminates this Agreement, the Contract Performance Security will only be returned to the Contractor if the termination is occasioned by an Act of God, unsuitable weather, natural disaster, withdrawal of labour in labour disputes, or any other unforeseeable cause clearly beyond the control of the Contractor.

### **Non-Compliance with Agreement Provisions**

- 13.04 An "Event of Default" means any of the following:
- (a) failure to perform any of the Contractor's obligations under this Agreement, or
  - (b) any representation or warranty made by the Contractor in this Agreement (including as part of any competitive process resulting in this Agreement being entered into) is untrue or incorrect, or
  - (c) an Insolvency Event, which means any of the following:
    - (i) an order is made, a resolution is passed or a petition is filed, for the Contractor's liquidation or winding up,
    - (ii) the Contractor commits an act of bankruptcy, makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency,
    - (iii) a bankruptcy petition is filed or presented against the Contractor or a proposal under the *Bankruptcy and Insolvency Act* (Canada) is made by the Contractor,
    - (iv) a compromise or arrangement is proposed in respect of the Contractor under the *Companies' Creditors Arrangement Act* (Canada),
    - (v) a receiver or receiver-manager is appointed for any of the Contractor's property, or
    - (vi) the Contractor ceases, in our reasonable opinion, to carry on business as a going concern.
- 13.05 On the happening of an Event of Default, or at any time thereafter, Silvicon Services Inc. may, at its option, by written notice to the Contractor do any one or more of the following:

- (a) require that the Event of Default be remedied within a time period specified in the notice;
- (b) require the Contractor to re-work the area to Silvicon Services Inc.'s satisfaction within a time period specified in the notice;
- (c) impose other requirements on the Contractor to deal with the alleged failure of compliance within a time period specified in the notice;
- (d) pursue any remedy or take any other action available to us at law or in equity; or
- (e) impose an Assessment if such an Assessment is provided for in the Contract Documents;
- (f) require the Contractor to do no further Work until the alleged failure of compliance is dealt with according to the Silvicon Services Inc.'s requirements; and
- (g) by written notice to you, terminate this Agreement with immediate effect or on a future date specified in the notice, subject to the expiration of any time period specified under Section 13.05(a).

These remedies shall be in addition to and not instead of any other remedy which Silvicon Services Inc. may have with respect to the Contractor's breach of this Agreement.

- 13.06 No failure or delay on Silvicon Services Inc.'s part to exercise its rights in relation to an Event of Default will constitute a waiver of such rights.
- 13.07 If you become aware that an Event of Default has occurred or anticipates that an Event of Default is likely to occur, you must promptly notify us of the particulars of the Event of Default or anticipated Event of Default. A notice under this section as to the occurrence of an Event of Default must also specify the steps you propose to take to address, or prevent recurrence of, the Event of Default. A notice under this section as to an anticipated Event of Default must specify the steps you propose to take to prevent the occurrence of the anticipated Event of Default.
- 13.08 Where the Contractor has reworked an area Silvicon Services Inc. shall inspect any re-worked area and the results of the inspection shall supersede any previous inspection results. The Contractor shall pay Silvicon Services Inc.'s costs of the inspection.
- 13.09 For the purposes of imposing an Assessment, Silvicon Services Inc. need not notify the Contractor before imposing an Assessment.
- 13.10 If Silvicon Services Inc. imposes an Assessment on the Contractor, the Assessment may be collected by deduction from a payment under this Agreement, any Contract Performance Security or from any holdback.
- 13.11 If the Contractor does not agree with Silvicon Services Inc. that there has been a failure to comply, the Contractor shall comply with any and all of the requirements imposed by Silvicon Services Inc., but the Contractor shall have the right to seek compensation from the Province under Article 14, if there in fact was no failure to comply.

#### **ARTICLE 14: DISPUTE RESOLUTION**

- 14.01 If a dispute occurs between the Parties concerning any matter governed by this Agreement, the disputing Party shall promptly advise the other Party and the Parties together shall use all reasonable efforts to resolve the dispute informally.
- 14.02 If the Parties are unable to resolve the dispute informally, within five (5) Work Days, the Contractor shall then give Notice, within ten (10) Work Days, of the complaint to the Silvicon Services Inc. Representative, which particulars shall include the following:
  - (a) a detailed description of the nature of the complaint;
  - (b) a list of the relevant provisions of the Contract Documents; and

- (c) an evaluation by the Contractor of the matters in dispute.
- 14.03 Silvicon Services Inc. shall, within twenty (20) Work Days of receipt by the Silvicon Services Inc. Representative of the written particulars, give the Contractor a decision, in writing, of one of the following:
  - (a) that Silvicon Services Inc. accepts the position of the Contractor; or
  - (b) that Silvicon Services Inc. rejects the position of the Contractor.
- 14.04 If Silvicon Services Inc. accepts the position of the Contractor, the Parties shall enter into an Amending Document to reflect the Agreement.
- 14.05 If Silvicon Services Inc. rejects the position of the Contractor, the Parties shall proceed to mediation with a mutually agreed upon third party. If the dispute is not resolved within fifteen (15) Work Days of appointment of the mediator, then the Parties may, if they both agree, proceed to arbitration pursuant to the *Commercial Arbitration Act*.
- 14.06 If the matter in dispute is not resolved promptly pursuant to Section 14.01, the Silvicon Services Inc. Representative may give to the Contractor instructions that in his or her opinion are necessary to provide for the proper performance of the Work and to prevent delays.
- 14.07 If the Contractor receives instructions pursuant to Section 14.06, the Contractor shall act immediately to carry out the Work pursuant to the instructions, but any Work performed by the Contractor in this respect shall be without prejudice to any claim the Contractor may have concerning the dispute.
- 14.08 Nothing in this Article precludes either Party from having a dispute resolved by a court of competent jurisdiction, although no steps shall be taken by either Party to initiate legal proceedings until after the process described in Sections 14.01 through 14.03 has been completed.

**ARTICLE 15: MISCELLANEOUS**

**Confidentiality**

- 15.01 The Contractor will treat as confidential and will not, without the prior written consent of Silvicon Services Inc., disclose or permit to be disclosed or used, either before or after the expiration or sooner termination of this Agreement, all information supplied to, accessed or obtained by, or which comes to the knowledge of the Contractor or a Subcontractor (whether verbally, electronically or otherwise) as a result of this Agreement except if the disclosure is necessary to enable the Contractor to fulfill its obligations or to comply with applicable laws or if it is information that is generally known to the public other than as a result of a breach of this Agreement.

**Contractor Status**

- 15.02 In relation to the performance of your obligations under this Agreement, you are an independent contractor and not our:
  - (a) employee or partner; or
  - (b) agent except as may be expressly provided for in this Agreement.

You must not act or purport to act contrary to this section.
- 15.03 The Contractor shall accept instructions from Silvicon Services Inc., but the Contractor is not subject to the control of Silvicon Services Inc. in respect of the manner in which instructions are carried out.
- 15.04 The Contractor shall not purport to commit Silvicon Services Inc. to the payment of any money to any person.

- 15.05 The Contractor shall ensure all personnel hired by the Contractor to perform the Work are at all times employees of the Contractor and not of Silvicon Services Inc. The Contractor is solely responsible for arranging reliefs and substitutions, pay, supervision, discipline, employment insurance, leave and all other matters arising out of the relationship of employer and employee.

#### **Notices**

- 15.06 Any notice or document required to be given under this Agreement shall be conclusively deemed to be validly given or delivered to and received by the Parties at the work site or at the address, facsimile, or email address specified on the first page of this Agreement (or at such other address as either Party may from time to time designate by notice in writing to the other):

(a) if hand delivered to the Party or the specified Party representative, on the date of that personal delivery;

(b) if prepaid post and if mailed during any period when normal postal services prevail, on the fifth business day after its mailing;

(c) if delivered by courier service, on the fifth business day after collection by the courier service;

(d) if sent by facsimile or electronic transmission, on the day of transmittal unless transmitted after the normal business hours of the addressee or on a day that is not a Work Day, in which case it will be deemed to be received on the next following Work Day.

#### **Non-Waiver**

- 15.07 A waiver of any term or breach of this Agreement is effective only if it is in writing and signed by, or on behalf of, the waiving Party and is not a waiver of any other term or breach.

#### **Contractor-Furnished Facilities**

- 15.08 Except where specified otherwise in the Contract Documents, the Contractor shall undertake all Work and furnish at its cost all labour, equipment, supervision, transportation, supplies and incidentals necessary to perform the Work.

#### **Unsuitable Workers**

- 15.09 The Contractor must provide a sufficient number of persons to perform the Work and shall ensure all persons are fully instructed and supervised, legally entitled to work in Canada, competent, English literate, efficient, qualified by education, adequately trained, and experienced to carry out the tasks to which each is assigned.
- 15.10 The Contractor shall, upon request of the Silvicon Services Inc., remove any person it employs for purposes of the Agreement who, in the reasonable opinion of the Province, is incompetent or has conducted himself or herself improperly, and the Contractor shall not permit a person who has been so removed to perform any further Work.

#### **Survival of Terms**

- 15.11 All terms of this Agreement in favour of Silvicon Services Inc. and all rights and remedies of Silvicon Services Inc., either at law or in equity, survive the expiry or sooner termination of this Agreement subject to any applicable limitation period prescribed by law.

#### **Material and Intellectual Property**

- 15.12 If the Contractor receives a request for access to any of the Material from a person other than Silvicon Services Inc., and this Agreement does not require or authorize the Contractor to provide that access,

the Contractor must promptly advise the person to make the request to Silvicon Services Inc..

15.13 Silvicon Services Inc. exclusively owns all property rights in the Material that are not intellectual property rights. Any equipment property Silvicon Services Inc. may provide to the Contractor or a Subcontractor is the Silvicon Services Inc.'s exclusive property. The Contractor must deliver any Material or equipment property to us immediately following expiration of this Agreement, or sooner upon our request, in the same condition it was supplied to the Contractor, excepting always loss or damage attributable to reasonable wear or tear.

15.14 Silvicon Services Inc. exclusively owns all intellectual property rights, including copyright in:

- (a) Received Material the Contractor receives from Silvicon Services Inc., and
- (b) Produced Material, other than any Incorporated Material.

Upon Silvicon Services Inc.'s request, the Contractor must deliver to Silvicon Services Inc. documents satisfactory to Silvicon Services Inc. that irrevocably waives in Silvicon Services Inc.'s favour any moral rights that the Contractor (or its employees) or a Subcontractor (or its employees) may have in the Produced Material and confirm the vesting in Silvicon Services Inc. of the copyright in the Produced Material, other than any Incorporated Material.

15.15 Upon any Incorporated Material being embedded or incorporated in the Produced Material and to the extent that it remains so embedded or incorporated, you grant Silvicon Services Inc.:

- (a) a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to exercise, in respect of that Incorporated Material, the rights set out in the *Copyright Act (Canada)*, including the right to use, reproduce, modify, publish and distribute that Incorporated Material; and
- (b) the right to sublicense or assign to third-parties any or all of the rights granted to Silvicon Services Inc. under section 15.15(a).

#### **Conflict of Interest**

15.16 The Contractor shall not perform any service to any other person, firm or corporation in circumstances which, in the reasonable opinion of Silvicon Services Inc., could give rise to a conflict of interest between the Contractor's obligations to that person and the Contractor's obligation under this Agreement.

#### **Site Clean Up**

15.17 The Contractor shall maintain the Occupied Areas free from any accumulations of waste products or debris, other than that caused by Silvicon Services Inc. or other contractors.

15.18 Upon the Contractor vacating any Occupied Area, the Silvicon Services Inc. shall inspect the area to determine, at his or her sole discretion, whether or not the area was left in an acceptable condition.

15.19 If the Silvicon Services Inc. determines the Contractor left the Occupied Area in an unacceptable condition, Silvicon Services Inc. may repair the area and charge the entire cost of the repairs to the Contractor.

#### **Camping and Parking**

15.20 Use of Provincial sites by the Contractor or the Contractor's employees or agents for the purposes of lodgings, camping or trailer parking in connection with Work under this Agreement, is permitted only with the prior written approval of:

- (a) on recreational sites, a representative of the Ministry of Forests, Lands and Natural Resource Operations, Sites and Trails Branch;

(b) on other Provincial Crown forest land including roads and landings, Silvicon Services Inc.'s appointed pursuant to Section 5.01 of this Agreement;

Such use, if approved, shall be without charge to the Contractor. The approval may be revised or revoked at any time by the Province.

### **Powers Cumulative**

15.21 The powers set out in the Contract Documents for the Province to enforce the Contractor's compliance with this Agreement may be exercised separately, concurrently or cumulatively.

### **Agreement Execution**

15.22 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of, each party and that executed copy being delivered to the other party by a method provided for in Section 15.06 or any other method agreed to by the parties.

### **Non-transferable**

15.23 The Contractor must not assign any of its rights or obligations under this Agreement without the Silvicon Services Inc.'s prior written consent. Upon providing written notice to the Contractor, Silvicon Services Inc. may assign to any person any of the Silvicon Services Inc.'s rights under this Agreement and may assign to any "government corporation", as defined in the Financial Administration Act, any of the Silvicon Services Inc.'s obligations under this Agreement.

### **Representations and Warranties**

15.24 As at the date this Agreement is executed and delivered by, or on behalf of, the Parties, the Contractor represents and warrants, except to the extent it has previously disclosed otherwise in writing to Silvicon Services Inc.:

(a) all information, statements, documents and reports furnished or submitted by it to Silvicon Services Inc. in connection with this Agreement (including as part of any competitive process resulting in this Agreement being entered into) are in all material respects true and correct; and

(b) if the Contractor is not an individual:

i) it has the power and capacity to enter into this Agreement and to observe, perform and comply with the terms of this Agreement and all necessary corporate or other proceedings have been taken and done to authorize the execution and delivery of this Agreement by, or on its behalf, and

ii) this Agreement has been legally and properly executed by the Contractor, or on its behalf, and is legally binding upon and enforceable against the Contractor in accordance with its terms.

15.25 The Parties hereto have duly executed this Agreement.



<b>SIGNED AND DELIVERED</b> on behalf of Silvicon Services Inc. by an authorized representative of Silvicon Services Inc.	<b>SIGNED AND DELIVERED</b> by or on behalf of the Prime Contractor (or by an authorized signatory of the Prime Contractor if a corporation)
<hr/>	<hr/>
<hr/>	<hr/>
Dated this _____ day of _____, 20__	Dated this _____ day of _____, 20__



**Operational Services Contract  
for SILVICONLBI-07**  
FREE GROWING/REGENERATION/FOREST  
HEALTH SURVEY CONTRACT

**OPERATIONAL SERVICES CONTRACT**

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