

**DRAFT**  
**STANDARDIZED**  
**QUINAUT INDIAN NATION**  
**INDEPENDENT CONTRACTOR AGREEMENT**

Program No. \_\_\_\_\_  
Purchase Order No. \_\_\_\_\_  
Resolution No. (if applicable) \_\_\_\_\_

This Standardized Quinault Indian Nation Independent Contractor Agreement (“**Agreement**”) is effective as of **insert month, day & year** (“**Effective Date**”) and is entered into by and between the Quinault Indian Nation, a federally-recognized Indian tribe with an address of P.O. Box 189, Taholah, WA 98587 (“**Nation**”) and **insert legal name of contractor** with its principal place of business at **insert applicable street address** (“**Contractor**”).

This Agreement will not be binding unless signed by a Quinault Business Committee Executive.

**1. Services.**

1.1. *Performance of Services.*

- (a) *General.* Contractor will perform for the Nation the services (“**Services**”) described in Exhibit A-1 and any such other Exhibits A-[n] (e.g., Exhibit A-2, Exhibit A-3, and so on) as may be agreed by the parties from time to time during the Term (as defined in Section 2 below) of this Agreement (each a “**Service Exhibit**”).
- (b) *Service Exhibits.* Each Service Exhibit will be in the form attached as Exhibit A (or such other form on which the parties may agree in writing). All Service Exhibits are incorporated into this Agreement.
- (c) *Changes to the Services/Service Exhibits.* Changes may be made to the Services description or Service Exhibit by mutual written agreement of the parties.
- (d) *Contract Officer.* The Nation’s Contract Officer for this Agreement is [REDACTED]. The Nation may change its Contract Officer by written notice to Contractor. The Contractor’s Contract Officer for this Agreement is [REDACTED].
- (e) *Subcontracting.* Contractor will not subcontract the Services or any portion of the Services under this Agreement to any third party without the prior written consent of the Nation. Contractor will bind any subcontractor to the terms of this Agreement and Contractor is responsible for compliance with the terms of this Agreement notwithstanding the use of any approved subcontractors (if any).
- (f) *Submittal of Forms.* Contractor will provide the Nation with a completed W-9 and obtain a business license from the Nation, if applicable, within ten (10) business days of the execution of this Agreement.
- (g) *Observation by Contract Officer.* Upon the Nation’s request, Contractor will allow the Contract Officer to observe Contractor’s performance of any Services under this Agreement.
- (h) *Progress Reports.* Contractor will provide the Contract Officer with progress reports regarding Contractor’s performance of the Services, upon request.

- 1.2. *Work.* Contractor acknowledges and agrees that, if any Services provided under this Agreement include the preparation, development or delivery by Contractor of any software, reports, drawings, papers, memoranda, photographs, written presentations, or other material of any kind (and in any format *whatsoever*, including without limitation digital format), or of any ideas, concepts, designs, discoveries, or improvements (collectively and individually, “**Work**”), then Contractor will deliver all Work to the Nation pursuant to the timeframe specified in the relevant Service Exhibit (the “**Schedule**”).

1.3. *Acceptance Process.* The Nation will, within thirty (30) calendar days following delivery of a Work deliverable identified in the relevant Service Exhibit (or such other time frame on which the parties mutually agree), provide a written notice of acceptance or rejection to Contractor (such notice may be by email and failure by the Nation to issue written notice *within* the thirty- (30-) day time period will be deemed acceptance). Such acceptance or rejection will be based on whether the Work conforms to the description in the relevant Service Exhibit (subject to Section 3.2 below) and whether it was delivered pursuant to the applicable Schedule. If the Nation rejects the Work deliverable, Contractor will have thirty (30) calendar days following notice of rejection to provide the Nation with a conforming Work deliverable (“**Correction Period**”). If Contractor fails to correct the Work deliverable within the Correction Period, or if Contractor fails to deliver a Work deliverable within the date(s) specified in the Schedule, the Nation may in its discretion take any one of the following actions: (a) accept the non-conforming (or untimely delivered) Work deliverable (without waiving the right to reject future Work deliverables and without waiving the right to terminate this Agreement or the relevant Service Exhibit under Section 2 below for breaches associated with such Work deliverable), (b) extend the Correction Period, or (c) accept or reject (in the Nation’s sole discretion) the non-conforming (or untimely delivered) Work deliverable and terminate this Agreement or the relevant Service Exhibit on written notice. Contractor will refund to the Nation any amounts paid under this Agreement for any rejected Work deliverables, and the Nation will have no obligation to pay for any Work deliverable unless and until it is accepted.

## 2. **Term and Termination.**

2.1. *Term.* This Agreement will commence on the Effective Date and expire on **date**, unless earlier terminated as provided in this Section 2 (“**Term**”).

2.2. *Termination of Service Exhibits/Agreement.*

(a) *Without Cause.* The Nation may terminate any Service Exhibit or this Agreement (including all Service Exhibits) without cause by issuing Contractor a written termination notice at least ten (10) calendar days before such termination, provided that the Nation will pay Contractor for all Services performed under the terminated Service Exhibit or this Agreement (as the case may be) prior to such termination. Upon termination under this Section 2.2(a), Contractor will immediately cease performance of all Services under the terminated Service Exhibit or this Agreement (as the case may be).

(b) *For Cause.* In addition to the Nation’s rights of termination in Section 1.3 and 2.2(a) above, the Nation may terminate this Agreement or the relevant Service Exhibit under this Agreement (as the Nation may decide, in its sole discretion) by issuing thirty (30) calendar days prior written notice to Contractor of a material breach by Contractor of this Agreement or any Service Exhibit under this Agreement, if such breach remains uncured at the end of the thirty- (30-) day notice period.

2.3. *Effect of Termination.* Within ten (10) business days following expiration or termination of this Agreement (or the termination of any Service Exhibit), Contractor will (a) deliver to the Nation all tangible materials (including any and all copies) constituting, containing or embodying the Work, all of the Nation’s Materials provided under this Agreement and any other materials containing or disclosing QIN Confidential Information or Personal Information (collectively, “**Service Materials**”) that were provided under this Agreement (or the relevant Service Exhibit, in the case of termination of a Service Exhibit), and (b) irretrievably delete all such Service Materials described in (a) that Contractor possesses or controls in electronic or other form. At the Nation’s request, Contractor will provide the Nation with written certification, executed by an officer of Contractor, confirming that Contractor has complied with the foregoing (a) and (b). Sections 3 (for amounts due and owing upon expiration or termination), 4, 5, 6, 7, 9, 10, and 11 of this Agreement will survive expiration or any termination of this Agreement. With respect to the expiration or termination of a Service Exhibit only, this Section 2.3 shall apply only to those Service Materials relevant to the Service Exhibit that is expiring or being terminated.

## 3. **Payment and Recordkeeping.**

3.1. *General.* As full and complete consideration for the Services satisfactorily performed under a given Service Exhibit (including all Work delivered as a part of the Services and that the Nation accepts pursuant to Section

1.3 above), the Nation will pay Contractor the amounts set forth in the relevant Service Exhibit, NOT TO EXCEED **§insert total agreement amount**. All payment(s) will be made pursuant to the terms of this Agreement, including the terms of this Section 3.

3.2. *Satisfactory Performance.* The Nation will only pay for satisfactorily completed Services. The Nation will have no obligation to provide Contractor with any payment or other consideration for Work that the Nation rejects in accordance with Section 1.3. The Contract Officer, as identified in Section 1.1(d) above, will determine whether or not Contractor's performance of the Services is satisfactory according to this Agreement.

3.3. *Payment Terms.*

(a) *Retention.* The Nation will retain **10** percent from each progress payment under a given Service Exhibit until (i) all Services have been satisfactorily completed under the Service Exhibit and (ii) Contractor provides documentation showing that all Contractor supplier and/or subcontractor payments have been made in connection with such Service Exhibit, and (iii) if applicable, Contractor provides documentation to Contract Officer showing proof of payment of all obligations to the Washington State Department of Labor & Industries and Employment Security Department.

(b) *Invoicing.* Contractor will invoice the Nation for amounts due under Section 3.1, as they come due for each Service Exhibit. The Contract Officer must approve payment and the adequacy of documentation submitted by Contractor as required under Section 3.3(a) above within five (5) business days after receipt of a properly issued invoice from Contractor. Payment will be made within ten (10) business days after receipt by Finance. The Contractor agrees to waive any claims to payment under this Agreement for failure to submit timely invoices.

(c) Payment of an invoice without asserting a dispute is not a waiver of any claim or right to challenge the invoice.

3.4. *Expenses.* Contractor bears sole responsibility for all expenses it incurs in connection with the performance of all of its obligations under this Agreement, unless otherwise expressly stated in a given Service Exhibit.

3.5. *Taxes.* The Nation is exempt from Washington State sales and business and occupation taxes for work done on the Quinault Reservation or goods delivered to the Nation on the Quinault Reservation. With respect to the Washington State business and occupation tax, this tax may not be included in overhead charges to the Nation. See, Washington Administrative Code (WAC) 458-20-192.

3.6. *Recordkeeping.* Contractor will maintain accurate and adequate books and records related to all costs and expenses incurred by Contractor under this Agreement, in such detail as will properly reflect and document all net costs, direct and indirect, of Services provided, including labor, materials, equipment, supplies, and other costs of whatever nature, for which reimbursement is properly claimed under the provisions of the Agreement (if and as authorized under a given Service Exhibit) (such books and records, the "Records"). Contractor will make available at Contractor's office all such Records for examination by a designated representative of the Nation, at all reasonable times during the Term and for a period of three (3) years after the expiration or termination of this Agreement.

#### **4. Intellectual Property.**

4.1. *Work Made for Hire.* The Nation has specially ordered and commissioned any and all Work, and Contractor agrees that any and all Work is a "work made for hire" for copyright purposes and the Nation will own all copyrights in the Work.

4.2. *Assignment.* Contractor hereby assigns to the Nation, its successors and assigns, all rights, title and interest in and to the Work including, without limitation, the following:

(d) any copyrights and equivalent rights (under any U.S. law or foreign law) that Contractor may possess or acquire in the Work that do not qualify as a work made for hire, including all renewals and extensions of

such rights that may be secured under the laws now or hereafter in force and effect in the United States or any other country;

- (e) all rights in and to any inventions, ideas, designs, concepts, techniques, discoveries, or improvements, whether or not patentable, embodied in the Work, but not limited to, all trade secrets, patent rights and equivalent rights in and to such inventions throughout the world, regardless of whether or not legal protection for the Work is sought;
- (f) all trademarks that Contractor develops as part of the Work; and
- (g) any documents, magnetically or optically encoded media, or other materials created by Contractor under this Agreement.

4.3. *Moral Rights.* To the maximum extent permitted by law, Contractor waives all moral rights in the Work.

4.4. *Additional Assistance.* At the Nation's expense, Contractor will execute and deliver such instruments and take such other action as may be requested by the Nation to perfect or protect the Nation's rights in the Work and to carry out the assignments contemplated in Sections 4.2 and 4.3. Contractor agrees to cooperate with the Nation in the filing and prosecution of any copyright, trademark or patent applications that the Nation may elect to file on the Work or inventions and designs relating to the Work.

4.5. *The Nation's Materials.* The Nation grants Contractor a limited, non-exclusive license to use, for the sole purpose of performing the Services under the relevant Service Exhibit, any software, reports, drawings, papers, memoranda, photographs, written materials, or other material of any kind (and in any format *whatsoever*, including without limitation digital format) (the "**Nation's Materials**"), that are provided by the Nation to Contractor under a Service Exhibit. Contractor will cease all use of any of the Nation's Materials upon the earlier of: the completion of the Services for which the particular Nation's Materials were provided, the expiration or termination of the relevant Service Exhibit, or the expiration or termination of this Agreement, at which point Contractor will return all of the Nation's Materials to the Nation. The Nation hereby reserves all rights not expressly granted in this Section 4.5 to the Nation's Materials and no additional rights are granted to Contractor in the Nation's Materials, whether by implication, estoppel or otherwise.

5. **Confidentiality.** Contractor agrees that at all times during the Term of this Agreement, and for five (5) years thereafter, Contractor will hold in strictest confidence, and will not use or disclose to any third party, any QIN Confidential Information. "**QIN Confidential Information**" means all non-public information that the Nation provides to Contractor, or that ought in good faith to be treated as confidential given the nature of the circumstances surrounding its disclosure, and includes without limitation the terms of this Agreement, future business plans, information regarding unreleased product or service offerings, marketing plans, the Nation's customers and suppliers, and information received from others that the Nation is obligated to treat as confidential. "**QIN Confidential Information**" does not include any information, however, that (a) was publicly available before it was disclosed to Contractor; (b) becomes publicly available after it is disclosed to Contractor under this Agreement, other than through a breach of this Agreement; (c) is or has been disclosed to Contractor by a third party who is not under an obligation to keep such information confidential; or (d) was developed independently by Contractor without use of the QIN Confidential Information.

## 6. **Representations and Warranties.**

Contractor represents, certifies, and warrants to the Nation that:

- 6.1. Contractor has full right and power to enter into and perform according to the terms of this Agreement, and nothing in this Agreement violates the terms of any agreement between Contractor and a third party;
- 6.2. (a) Contractor has not been debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities, or proposed for debarment or suspension, and certifies it is eligible to receive a federal award under federal procurement regulations;
- (b) Contractor has not within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining,

attempting to obtain, or performing a public transaction or contract (tribal, federal, state, or local); violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Contractor is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (tribal, federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) above;

(d) Contractor has not within a three-year period preceding this certification had one or more public transactions or contracts (tribal, federal, state, or local) terminated for cause or default;

(e) Contractor is "Actively" registered with SAMS (Service for Award Management), and has been assigned the following Unique Entity Identifier (UEI) issued by SAMS: [REDACTED];

- 6.3. Contractor will not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency;
- 6.4. Contractor has the sole right to control and direct the means, manner, and method by which the Services required by this Agreement will be performed, provided that the Services will be performed in a professional and skillful manner consistent with the standard of quality and professionalism generally followed in the Pacific Northwest in Contractor's field;
- 6.5. Contractor will employ all personnel reasonably necessary to perform the Services under this Agreement and such personnel will comply with all applicable tribal, state and/or federal requirements and/or qualifications for performing the Services;
- 6.6. Contractor will at all times in the performance of Services under this Agreement, and the Services and the Work provided to the Nation under this Agreement will, comply with all applicable tribal, federal, state and local laws, including the QIN Tribal Employment Rights Ordinance, Title 97;
- 6.7. Contractor will obtain all licenses and permits necessary to perform the Services;
- 6.8. Contractor will obtain and maintain during the Term a Quinault Indian Nation business license;
- 6.9. Contractor will file all required notices, prepare and file all required returns for, and pay when due, all lawfully imposed taxes on any operations under this Agreement;
- 6.10. The Work as delivered to the Nation does not and will not infringe or misappropriate any copyright, patent, trade secret, or trademark, or violate any right of publicity, privacy or any other proprietary or legal right held by any third party;
- 6.11. Contractor has all necessary rights in the Work to transfer ownership to the Nation as required under Section 4 above;
- 6.12. Contractor is free to provide services to other clients, so long as such other clients are not in competition with the Nation and so long as there is no interference with the Contractor's contractual obligations to the Nation;
- 6.13. Contractor has no authority to and will not exercise or hold itself out as having any authority to enter into or conclude any contract or to undertake any commitment or obligation for, in the name of or on behalf of the Nation; and
- 6.14. Contractor warrants that there is no conflict of interest between the Contractor, its subcontractors, or other agreements, if any, and the Services to be performed hereunder, including that Contractor has no financial interest related to said Services except as provided in this Agreement. Contractor will advise the Nation if a conflict of interest arises in the future.

## **7. Limitation of Liability/Indemnification.**

- 7.1. EXCLUSION OF CERTAIN DAMAGES. THE NATION WILL NOT BE LIABLE TO CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING

OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE NATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. THIS EXCLUSION OF DAMAGES SHALL APPLY REGARDLESS OF THE FORM OR CAUSE OF ACTION OR THE ALLEGED BASIS OF ANY CLAIM AND EVEN IF THE REMEDIES OTHERWISE PROVIDED UNDER THIS AGREEMENT, AT LAW OR IN EQUITY FAIL OF THEIR ESSENTIAL PURPOSE.

- 7.2. *Indemnification.* Contractor will indemnify, defend, and hold the Nation and its successors, officers, directors and employees harmless from any and all actions, causes of action, claims, demands, costs, liabilities, expenses and damages arising out of or in connection with any claim that: (a) as alleged, would constitute a breach of any Contractor representation or warranty set forth in Section 6 above, or (b) arises out of Contractor's negligent or willful misconduct.
- 7.3. *Procedure.* If any action is brought against the Nation for which Contractor is obligated to provide a defense under Section 7.2 above, the Nation will promptly notify Contractor in writing. The Nation will provide reasonable cooperation to Contractor, at Contractor's expense, in connection with the defense of any such action. Contractor will employ counsel reasonably acceptable to the Nation in defending any such action. The Nation has the right to employ separate counsel and participate in the defense of any claim, at the Nation's expense. Contractor will reimburse the Nation upon demand for any payments made or loss suffered by it at any time, based upon the judgment of any court of competent jurisdiction or pursuant to a bona fide settlement of claims covered by Contractor's indemnification obligation in Section 7.2. Neither party will settle any claim for which indemnification is sought under Section 7.2 without the other party's prior written consent, which consent will not be unreasonably withheld.
- 7.4. *Duty to Correct.* If the Work furnished hereunder is in any action held to be infringing and its use enjoined, Contractor, in addition to its obligations under Section 7.2 and 7.3, will promptly and at its expense:

- (a) procure for the Nation the right to continue use, sale, and marketing of the Work; or
- (b) replace or modify the Work with a version of the Work that is non-infringing.

If (a) or (b) are not available to Contractor, Contractor will refund to the Nation all amounts paid to Contractor by the Nation hereunder.

**8. Insurance Coverage.** Contractor will obtain and maintain the following insurance and will name the Nation as an additional insured and provide the Nation written proof of the same within ten (10) business days of the execution of this Agreement. Contractor will promptly provide written notification to the Nation of any changes regarding insurance.

- (a) *General Liability.* Contractor will maintain General Liability Insurance in the amount of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate.
- (b) *Automobile liability.* Contractor will maintain automobile liability insurance covering owned, hired, and non-owned vehicles used on the Quinault Indian Reservation. The policy shall provide for coverage of two hundred thousand dollars (\$200,000) per person and five hundred thousand dollars (\$500,000) per accident for bodily injury and five hundred thousand dollars (\$500,000) property damage, or five hundred thousand dollars (\$500,000) Combined Single Limit per occurrence.
- (c) *Workers' compensation and disability benefits insurance.* Contractor will pay applicable Washington State Department of Labor and Industries insurance and Washington State Employment Security taxes.
- (d) *Professional Liability.* If the Services require Contractor to provide a professional service to the Nation, Contractor will maintain professional liability insurance in the amount of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate.

9. **Notices.** Any notices given under this Agreement will be delivered either by messenger or overnight delivery service, or sent by facsimile with a confirmation sent via certified or registered mail, postage prepaid and return receipt requested, and shall be deemed to have been given on the day when received by the party to whom the notice is given.

	<b>Quinault Indian Nation Contact Person</b>	<b>Contractor Contact Person</b>
Name, Title		Insert name & title
Party	Quinault Indian Nation	Insert contractor name as stated in the preamble
Address	P.O. Box 189	Insert street address (NOT a PO box)
City, State, Zip	Taholah, WA 98587	Insert city, state & zip code
Phone		Insert phone #
Facsimile		Insert fax #
Copy to:		Insert additional copyee name or N/A

**10. Sovereign Immunity.**

- 10.1. *Limited Waiver.* PThe claim alleges a default by the Nation of one or more specific duties owed to Contractor that are expressly assumed by the Nation under the terms of this Agreement. No suit shall be had for any other reason.
- 10.2. The claim seeks either: rovided that all of the following conditions are met, the Nation grants to Contractor a limited waiver of its sovereign immunity to be sued under an explicit provision of this Agreement, unless the Nation is otherwise protected from a claim under the Federal Tort Claims Act:
- (a) The claim is made by Contractor, and not by any other party, whether an individual or an entity of any kind. The right to sue shall not be transferable.
  - (b)
    - i. specific performance by the Nation to bring the Nation into compliance with the obligations or duties expressly assumed by the Nation in this Agreement, provided that the cost of performance does not exceed the original cost of the Agreement; or
    - ii. payment of a monetary judgment arising from a default of an explicit duty owed by the Nation to Contractor under the terms of this Agreement, which shall not exceed the original cost of the Agreement and shall be limited to payment from the Nation’s then-existing bank account, and not from any other source, asset or property of the Nation.
  - (c) The claim is brought in the Quinault Tribal Court.
- 10.3. Other than as expressly set forth in Section 10.1 above, no other provision in this Agreement shall be deemed a waiver by the Nation of its sovereign immunity in any form, regardless of the terms used or material directly or indirectly referenced.

**11. Miscellaneous.**

- 11.1. *Relationship of the Parties.* Contractor is an independent contractor for the Nation. Nothing in this Agreement creates an employer-employee, agency, joint venture, employment or partnership relationship. Neither party may make representations on behalf of or otherwise bind the other party. Contractor is responsible for all of Contractor’s federal and state taxes, withholding, social security, insurance, and other benefits.
- 11.2. *Assignment.* Contractor will not assign this Agreement, or any rights or obligations hereunder, whether by operation of contract, law or otherwise, without the prior written consent of the Nation. Any attempted assignment in violation of this Section 11.2 is void, and the Nation may terminate this Agreement on written notice in the event of such an attempted assignment.

11.3. *Waiver/Severability.* No provision of this Agreement will be deemed waived unless the waiver is in writing and signed by the waiving party, and no such waiver will constitute a waiver of any other provision(s) or of the same provision on another occasion. If any term of this Agreement is found by a court of competent jurisdiction to be in whole or in part unenforceable, then such unenforceable term or portion thereof will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the allocation of risk among the parties reflected in the original provision, and the remainder of this Agreement will continue in effect.

11.4. *Dispute Resolution.*

- (a) *Informal Resolution/Mediation.* The Contract Officer shall attempt to resolve conflicts and disputes at the earliest opportunity. If the parties are unable to resolve disputes on an informal basis through their representatives, the parties will engage in mediation in good faith, with each party equally sharing the costs of mediation. Mediation involves each side of a dispute sitting down with an impartial person, the mediator, to attempt to reach a voluntary settlement. Mediation involves no formal court procedures or rules of evidence, and the mediator will not have the power to render a binding decision or force an agreement on the parties.
- (b) *Commencement of Mediation.* Either party may commence mediation by providing to the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with one another in selecting either a certified mediator or a mediation services company, and in scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs.
- (c) *Confidentiality.* All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any mediation service employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
- (d) The negotiation and execution of this Agreement is deemed by the parties to have occurred within the Quinault Indian Reservation and any interpretation hereof shall be in accordance with the laws of the Quinault Indian Nation or applicable federal law. All actions arising under this Agreement or reasonably related to this Agreement shall be litigated in the Quinault Tribal Court. If the Nation must enforce its rights under this Agreement in court, Contractor shall be liable for reasonable attorney's fees and costs if the Nation is the prevailing party.

11.5. *Entire Agreement.* This Agreement constitutes the entire agreement between parties with respect to its subject matter, and it merges all prior and contemporaneous communications regarding such subject matter. It may not be modified except by a written agreement signed by duly authorized representatives of Contractor and the Nation.



IN WITNESS WHEREOF, the Nation and Contractor agree to the terms and conditions set forth in this Agreement as of the Effective Date, provided that: this Agreement will not be binding unless signed by a Quinault Business Committee Executive.

<b>CONTRACTOR</b>	<b>QUINAULT INDIAN NATION</b>
By: _____	Contract Officer: _____
Printed Name: _____	Division Director: _____
Title: _____	APPROVED AS TO FORM by Office of Attorney General: _____
Date: _____	Grants and Contracts: _____ QBC Executive: _____

**SERVICE EXHIBIT A-# TO THE STANDARDIZED QUINAULT INDIAN NATION INDEPENDENT CONTRACTOR AGREEMENT**

This Service Exhibit A-## (“Service Exhibit”) to the Standardized Quinault Indian Nation Independent Contractor Agreement is entered into by and between Quinault Indian Nation (the “Nation”) and insert legal name of contractor (“Contractor”) on insert Work start date (“Service Exhibit Effective Date”) under the Standardized Quinault Indian Nation Independent Contractor Agreement between the parties with an Effective Date as of insert main agreement Effective Date (“Agreement”). Capitalized terms not otherwise defined in this Service Exhibit will have the same meaning as set forth in the Agreement.

**1. Description of the Services to be Performed by Contractor.**

Insert a detailed description of the Services to be performed.

**2. Timeline for Performance of the Services/Delivery of the Work.**

Contractor will complete and deliver all Services to the Nation, including providing all Work deliverables identified in the table below (each a “Deliverable”), in accordance with the following Schedule.

<b>Work Deliverable</b>	<b>Due Date</b>
A. “Deliverable 1”: Describe deliverable.	Insert date
B. “Deliverable 2”: Describe deliverable.	Insert date
C. “Deliverable 3”: Describe deliverable.	Insert date

**3. Payment.**

As complete and final consideration for the Services performed in accordance with this Service Exhibit (including all Work provided under this Service Exhibit and accepted by the Nation under Section 1.3 of the Agreement), the Nation will pay Contractor as follows:

At a rate of \$ \_\_.00 per hour, for a maximum of \_\_ hours, with a corresponding amount not to exceed \$ \_\_.00 US Dollars, on acceptance of the Work by the Nation pursuant to Section 1.3 of the Agreement.

**OR**

*[Use of the following language presumes Deliverables are defined per the table in Section 2 above]* A total of \$ \_\_.00 in the aggregate, on acceptance of each of the following Work Deliverable by the Nation pursuant to Section 1.3 of the Agreement, which shall be paid in the following installments:

<b>Work Deliverable/</b>	<b>Payment Amount</b>
A. Deliverable 1.	\$
B. Deliverable 2.	\$
C. Deliverable 3.	\$

**4. Service Exhibit Term.** This Service Exhibit is entered into by the parties as of the Service Exhibit Effective Date and will continue through date, unless terminated earlier as provided in the Agreement (“Service Exhibit Term”).

## SERVICE EXHIBIT A-1

The Quinault Department of Natural Resources (QDNR), Forestry Division proposes to do a precommercial thin/timber stand improvement on selected stands within the Reservation. These overstocked stands are to be thinned and released, leaving a healthy, well spaced and properly stocked stand.

The Contractor agrees to do a pre-commercial thin/timber stand improvement on approximately **918** acres of forestland as described in Service Exhibit B - Unit Maps. The Contractor may use Reservation roads as necessary to perform this agreement, but the Nation is not responsible for the conditions of the roads.

### PCT/TIMBER STAND IMPROVEMENT CONTRACT SPECIFICATIONS

#### 1. Spacing

- a. It is crucial the **best trees** within a given area be left, rather than rigid adherence to an exact spacing requirement. Spacing will be judged on average distances between leave trees in the unit. The required trees per acre (TPA) to be left will be designated on a per unit basis and will be written on Service Exhibit B – Unit Maps. For example: a prescription of 360 TPA or 11'x 11' will have a spacing variance of 50% (+ or - 5.5'). In other words, leave tree spacing must be between 5.5' and 16.5' apart. See section 4.1 'Compliance and Acceptance' for further examples.
- b. Acceptable leave trees shall be those which have the tallest height, largest crown (at least 1/3 of the bole has live crown), straightest stem, and are well-formed species of good vigor, color, and with no damage. Leave trees will be any conifer, Red Alder, or Cottonwood greater than 3' tall unless otherwise specified in Service Exhibit B – Unit Maps. Only dominant and codominant trees will be allowed as leave trees.
- c. If no undamaged tree is available as a leave tree, retain the tree with the least amount of damage. Damaged or deformed trees are not to be cut when their removal will create voids greater than the maximum spacing limit within the stand. If a tree is heavily damaged or diseased and likely to die as a result of damage or disease, it is best to leave an additional tree to take its place. Spacing ranges will be adjusted for excess trees due to the maximum cut diameter limitations, or leaving excess trees due to trees greater than the maximum cut diameter being heavily damaged. It is best to leave a few extra trees around natural openings. Spacing ranges will be adjusted due to natural openings.
- d. Do not cut undamaged live trees 7" or larger at DBH, unless specified differently in Service Exhibit B – Unit Maps. Cut all damaged live trees less than 8" DBH if there is an undamaged dominant or codominant tree within 10 feet unless specified differently in Service Exhibit B- Unit Maps. Undercutting caused by the maximum cut diameter limitation will not result in a payment deduction. Any live conifer, Red alder or Cottonwood which is over 9" DBH that is found cut (on or off the

plot) will result in a **\$25 fine per incident** and will be withheld from payment for the unit. Dead trees (snags) greater than 10" DBH will be left standing. Do not consider dead trees as leave trees and do not space off of them (ignore their presence). Any snag 10" DBH or larger that is found cut (on or off the plot) will result in a quality deduction. Cutting dead trees less than 10" DBH are at the discretion of the contractor, unless otherwise stated in Service Exhibit B-Unit Maps.

- e. For the purpose of this contract, damage is defined as trees with any of the following; forked tops, broken tops, rot, bear damage to over 50% of the bark surface around the tree, excessive lean over 15 degrees, mistletoe, chlorotic needles, sweep, dead tops, mechanical damage, defoliation and any other insect or disease symptom.

## 2. Species Priority:

- a. Species priority will be designated on a per unit basis and will be written on Service Exhibit B – Unit Maps.
- b. **Do not cut undamaged Western White Pine (WWP) or Pacific Yew (PY).** If WWP are large enough to qualify as a leave tree you may space off of them. If not, ignore the presence of the WWP and PY and thin as if they were not there. This clause will apply to all of the units. Refer to Service Exhibit B- Unit Maps for individual prescriptions.
- c. **Sitka spruce (SS) and Lodgepole pine (LP) will not be considered an acceptable leave tree** unless there are no other acceptable leave trees within the required spacing regime or otherwise specified in Service Exhibit B- Unit Maps. If the size (DBH & Height) difference between the SS or LP and a preferred species tree is significantly greater such that it would be inappropriate to cut the SS or LP in favor of the preferred species, then leave the LP or SS. Also, leave an extra preferred species tree if it is at least 5.5' away (based on 360 TPA) from the LP or SS. Extra TPA on these types of plots is acceptable and will not require spacing adjustments elsewhere.

## 3. Cutting Specifications

- a. All competing trees will be completely severed below the lowest live limb or at 12" above the ground, whichever is lower. If a natural obstruction prevents cutting the tree below a 12" stump height, the tree must be completely severed within 12" of the top of the obstruction. Hardwoods may be girdled, but the cambium must be severed around the circumference of the tree for a width of ½".
- b. All competing hardwoods within 15' of a leave tree shall be cut or girdled. Hardwoods are competing if at the time of thinning, they are tall enough to reach the live crowns of the leave trees, regardless of the size of the leave trees. Competing hardwoods for the purpose of this contract shall be cascara, elderberry,

crabapple, big-leaf maple, willow, scotchbroom, vine maple or any tall woody shrub species. Exceptions to this rule will be specifically mentioned in Service Exhibit B - Unit Maps. **All multi-stemmed big-leaf maple within a unit's boundary must be cut or pruned to one stem. In some situations, a clause may be included requiring that all scotchbroom and overgrown trees and vegetation along a units' access road be cut. In this event it will be included and described in Service Exhibit B-Unit Maps.** Red Alder and Cottonwood are considered commercial species, but Cottonwood is the least desirable leave tree. Additional instructions on competing hardwoods on a unit by unit basis will be found in Service Exhibit B – Unit Maps.

Pockets of Red alder (RA) and Cottonwood (CW) within a stand will be thinned according to the spacing guidelines for the unit in Service Exhibit B – Unit Maps. Conifer understory trees, which are at least 2/3 as tall as RA and CW, and have healthy crowns, shall be released at the same spacing as the RA and CW. If the RA and CW are greater than 8” at DBH then do not cut them to release the conifer. In RA and CW stands, or pockets within a stand, understory conifers with healthy crowns may be left uncut if they are at least 4’ from a RA or CW leave tree.

- c. **All thinning debris will be removed from roads, cut banks, ditches, culverts, buffer strips and will be redistributed within the unit at the end of every day. All the slash created by the treatment must be left within the unit boundaries. Failure to do so will result in payment for that unit being withheld until clean up is completed.**
- d. Unless specifically mentioned in Service Exhibit B – Unit Maps, drivable roads along primary road systems contained inside the unit boundaries, or that form unit boundaries, will have a **no cut** buffer strip 10 feet wide from the edge of the drivable road surface into the unit. Drivable roads that do not require a buffer strip will be specifically mentioned in Service Exhibit B – Unit Maps. There are no buffer strips on nondrivable roads. For all roads drivable or not, stems will be felled away from the road for one tree length. If a stem does fall into a road, culvert or ditch line it must be removed. **Units require leaving a walking trail on thinned nondrivable roads.** These units will be specifically mentioned in Service Exhibit B – Unit Maps.
- e. Unless otherwise specified in Service Exhibit B- Unit Maps the following will occur; either a no cut zone (buffer strip or RMZ) of at least 5’ from the stream channel (perennial or intermittent), wetland, or pond edge will be left *or* do not cut from the break in slope to the stream channel or pond edge, which ever is further. The CO or COR will have sole authority to decide which distance is further. Some buffer strips may be wider but they will be specified in Service Exhibit B-Unit Maps. All stems will be felled away from streams, ponds and buffer strips for one tree length. If a stem does fall into a stream, wetland, pond or buffer strip remove it. Thinning debris that falls in dry stream channels must be removed before proceeding to the next unit. Streams, wetlands and ponds will be left in their

original condition. **The use of power saws is prohibited within the ordinary high water mark of all waters unless otherwise stated in the contract.**

- f. Unless a cut stem is caught inside the crown of a leave tree, and several attempts have been made to saw or pull the tree to the ground, all cut stems will be felled at a 45 degree angle or greater to the ground, and at no time can a leave tree be left leaning as a result of having a cut tree lying up against it.
- g. Consider trees forked below DBH as one stem. When you encounter a forked tree below or at DBH, cut one of the stems trying not to damage the residual stem. In the case of Red alder, a forked tree may be cut in order to maintain appropriate tree spacing, TPA, and to leave the healthiest stems. In this situation stems must be severed at a downward sloping angle to shed water. Forked trees are lower priority than vigorous, well-formed single stems. Forked trees will not be cut if one of the stems is over the maximum cut diameter from Service Exhibit B-Unit Maps. Trees forked below the ground or litter line are considered separate stems.
- h. Open grown, dominant or codominant trees will be selected for leave trees. Suppressed or intermediate trees with small crowns are not acceptable and must be cut. This rule will also apply to suppressed trees growing into the live crowns and competing with leave trees, or trees over waist height and within 15' of a leave tree.
- i. No cutting of genetically selected parent trees. They are marked with large yellow numbers and some have white tags.
- j. Cutters will not damage the bole or significantly reduce the crown of any leave tree.
- k. Do not cut trees or shrubs with blue flagging or blue paint on them. Solid blue is used for property boundaries and we want to maintain these lines. If these trees meet leave tree standards then you may space off of them. If they do not meet leave tree standards then ignore their presence. Do not disturb trees (witness, bearing) designated for corner monumentation or the corner monuments themselves. These locations are needed to maintain correct ownership boundaries.

#### 4. Compliance and Acceptance

- a. Compliance will be based on inventory and inspection plots scattered throughout the unit sufficient to yield approximately a 1% sample size.
- b. Full compliance will be met if the plots indicate a minimum of 93% net quality.
- c. Quality Compliance
  - 1) **Spacing Guidelines:** Actual on the ground spacing (excluding buffer strips) may be varied up to 50% of the prescribed guidelines in order to select the best leave tree. However, the average TPA for the unit must be within + or -

7% of the unit prescriptions. If a unit is not capable of yielding the prescribed tree spacing guidelines due to natural reasons (competing hardwood and shrub patches, voids, poor site quality, fire scar, bear damage, etc..) tree spacing will be adjusted based on the # of acceptable leave trees as determined from the plot score cards. This option will be at the discretion of the Nation's Contract Officer (CO) or the Nation's Contract Officer's Representative (COR) and applied only when all attempts to conform to the original prescription have been unsuccessful.

*For example:* If the spacing prescription is 11' x 11' or 360 trees per acre (TPA), then the average TPA must fall within 334 to 385.

$$360 \text{ TPA} \times 7\% = 25.2,$$

$$360 - 25.2 = 334.8 \text{ TPA}$$

$$360 + 25.2 = 385.2 \text{ TPA}$$

The unit is **overcut** if the trees per acre are less than 334 and it is considered **undercut** if the trees per acre fall over 385.

A penalty will be assessed if a unit ends up with a final TPA count outside the above parameters. A 7% deduction will be taken from the units' % quality for overcutting and a 4% deduction will be taken from the units' % quality for undercutting.

2) **Quality Guidelines:** On each plot, the trees left will be tallied. Each leave tree will be evaluated and if applicable, deductions made for the following quality criteria:

- 1) Form: leave trees with poor form when a better tree could have been left. Section 1b
- 2) Species selection: Wrong species selection as per contract. Section 2
- 3) Leaner/standing cut: Cut trees leaning on leave tree or cut trees not pushed over. Section 3f
- 4) Spacing: leaving excess trees or over cutting trees as per unit prescription. Section 1a, 4c1, Service Exhibit B – Unit Maps
- 5) Girdling/severing competing suppressed trees/hardwoods: Not properly or completely girdled or severed. Section 3a,b,h.
- 6) Cutting trees over the DBH limit guidelines: Section 1d
- 7) Cutter damage to a leave tree: Section 3j
- 8) Leaving cut stumps: Not in compliance with section 3a
- 9) Buffer strips: Violating buffer strip requirements

\*There may be more than the indicated sections to reference. The above section references are only examples. \*\*Only one quality deduction given per leave tree.

- 3) **Calculation for % Quality:** the leave trees present minus the total number of quality deductions, divided by the leave trees present multiplied by 100%.

**Calculation for Spacing guideline requirements:** trees per acre (TPA) equals leave trees present divided by the number of plots taken multiplied by the size of the fixed plot. If TPA is within the spacing guidelines, then 0% deduction will apply. If TPA violates guidelines then the appropriate deduction (7% overcut or 4% undercut) will apply. Review of spacing and deductions/calculation for net % quality will be made by and at the discretion of the Nation’s Contract Officer.

**Calculation for Net % Quality:** % quality minus any TPA deductions.

*Example:* 1/50<sup>th</sup> acre plots (16.65’ radius)  
360 TPA desired (11’ x 11’)

Plot #	Leave trees	Desired Leave trees	Quality Deductions	Remarks
1	5	6	0	1 over cut
2	6	6	1	(5) left competing hardwood
3	7	7	0	OK
4	8	7	1	(4) spacing violation (closer than 5.5’ for 360 TPA)
5	7	7	1	(6) cutter damage
6	7	7	1	(1) form
7	8	7	0	1 excess
Totals	7	48	47	4

**TPA:**  $48 / 7 \times 50 = 343$  spacing requirements 334 to 385—no deduction

**%Quality:**  $\frac{48 - 4}{48} \times 100 = 92\%$

**Net % Quality:** 92% - 0 % TPA deduction = 92%

d. Procedure in Case of Unsatisfactory Thinning

- 1) If for any portion of the unit the % Quality falls below 93% or the TPA falls outside the prescribed ranges, the contractor may be required to rethin the area at the discretion of the Nation’s Contract Officer.



- 2) If undercutting occurs according to the contract on a unit or parts thereof, payment may be withheld on the unsatisfactory unit until the Contractor returns, at no additional expense to the Nation, and rethins the unsatisfactory unit or parts thereof.

If more than 25% of the inspection plots show overcutting or if the unit as a whole is overcut by 25% or more of the prescribed spacing, the work on that unit will not be paid for.

- 3) After rethinning, a second inspection will be made. Inspection after rework will be made in the same manner as the first inspection. Payment will be based on the result of the reinspection at the Nation's CO's discretion.
- 4) The CO has the right to deny a contractor request to rethin an area if the CO feels the area could not benefit from a rethin.
- 5) Failure of the Contractor to raise the quality of subsequent thinning above the desired 93% level may constitute a default under this agreement.

## 5. Payment

See Service Exhibit A-2, Payment and Bid Prices. Payment will be based on agreed upon amounts as indicated in Exhibit C, Payment and Bid Prices.

## 6. Boundaries

- a. The boundaries, except for easily identified ground features, have been plainly marked with orange and black plastic flagging as indicated in Service Exhibit B-Unit Maps. Some of the older flagging may have faded from orange to yellow.
- b. Net acreage as indicated on the individual Unit Maps was determined on the horizontal plane with either mechanical or electronic planimeters, GIS, or ground traverse. Large openings have been deducted from the gross acreage. **Avenza mobile map app or other GIS apps is highly recommended for tracking locations within the unit.**
- c. The Contractor shall be held liable for any damage and legal costs incurred by thinning outside the unit boundary.

7. Special Provisions

- a. The contracting officer (CO) or his representative (COR) may unilaterally shut down the contractor for an unspecified amount of time if the CO feels excessive amounts of damage is occurring to the stand as a result of the thinning operation, bear damage, or any other natural disturbance. Also, the CO can shut down the contractor if the fire danger warrants a suspension of work even though the industrial fire precaution may not require it. Additionally, the CO may suspend operations if QIN personnel are not available to audit or administer the contract.
- b. At a minimum, the contractor is required to follow all state and industrial fire precaution level rules.
- c. The Nation guarantees the acreage amount of the units to be within 5% of the paid for acres. If the contractor feels the actual acreage of the unit is greater than a 5% difference than the acreage paid for, the contractor has the right to ask for a complete traverse of the area in question to determine if there is a significant difference. In this event, the Nation will traverse the unit with a global positioning (GPS) receiver. If the traverse shows the acreage to be within 5% of that paid for, the Contractor agrees to pay the full administrative costs to the Nation resulting from traversing the unit. If the traverse shows the acreage to be different by more than 5% of that paid for, the Nation will pay the full cost of the traversing and the Nation will pay the contractor (for the unit in question) for the corrected acreage. The Nation has the right to choose who will traverse the unit.
- d. The addition of units constitutes a modification, which must be agreed to by both the Nation and Contractor. The Nation may also remove solicited units at its discretion; however this will be done prior to awarding to the Contractor. The Contractor shall make no claim for extra work unless so agreed. As previously mentioned, the Nation may ask the Contractor to perform hourly labor based on the seasonal project needs of the Forestry Division. This amount of remuneration will be predicated upon the prices presented in Attached Service Exhibit A-2, Payment and Bid Prices.
- e. Attached Service Exhibit A-2, Payment and Bid Prices, is hereby made a part of this contract.
- f. Attached Service Exhibit B, Unit Maps, is hereby made a part of this contract.
- g. This contract, unless specifically amended, in no way permits the Contractor to remove merchantable or potentially merchantable special forest products from the operating area for the purpose of sale or use, or for any other reason.

- h. Litter and/or refuse brought into operating areas by the Contractor or his employees, shall be removed from the premises and disposed of in garbage disposal areas meeting all state, county, and local requirements. Such litter will include refuse resulting from equipment maintenance, abandoned equipment and containers and other expended materials. **A \$25 fine per incident** may be assessed at the CO discretion and will be deducted from the unit payment.
- i. A maximum of 10 thinners in a crew is permitted; this includes the foreman if he is a thinning foreman. A crew size of more than 10 thinners or more than one crew on a contract must be approved by the CO.
- j. Work shall only proceed on regular Monday through Friday workdays. Work on Saturday, Sunday or designated holidays will require written permission from the CO. Work shall also be suspended on November 11<sup>th</sup> 2022, November 23<sup>th</sup> - 25<sup>th</sup> 2022, December 5<sup>th</sup> 2022, December 23<sup>th</sup> 2022 through January 3<sup>rd</sup> 2023, and May 29<sup>th</sup> 2023, unless otherwise authorized by the CO. The QIN would prefer that all units are completed prior to July 31<sup>st</sup> 2023. In the event that work must proceed beyond this date due to unforeseen acts of nature, changes in Endangered Species Act restrictions, contract issues etc., the Contractor will resume work as soon as possible, and must make every attempt to complete the contract as close to August 18<sup>th</sup> 2023 as possible. Work on all units *must* be completed by August 31<sup>st</sup> 2023.
- k. Every crew must have a designated crew foreman and the crew foreman **must** be able to speak and comprehend the English language.
- l. The CO reserves the right to select the sequence of units to be thinned. They will be selected to permit continuous progression to adjacent units' insofar as possible, dependent on weather and other factors. The units need to be completed without the occurrence of extended contractor absences.
- m. A pre-work meeting is required before any work may begin on the contract. It is mandatory that the Contractor and his foreman's be present. If the contractor starts work prior to the pre-work meeting, a \$200.00 per day penalty will be assessed the contractor for each day of work performed by his crews prior to a pre-work meeting and may place the contractor in default.