

Goals and Specifications

I. Description of Work

- A. The Contractor agrees to plant approximately XXX forest tree seedlings on approximately XXX acres of land as described by the Nation on the Quinault Reservation. This contract to plant the specified amount of seedlings shall be in the amount of \$XXX.XX. Tree seedlings will be provided by the Nation and made available to the Contractor at the planting site. The Nation reserves the right to inspect and cull planting stock in the field.
- B. Contractor will supervise and direct all planting. Nation will instruct Contractor's representative on the ground as to planting methods, tools, crew organization, spacing, and seedling care; and Contractor will follow all such instructions. If such instructions are not complied with, the Nation may terminate planting operations.
- C. Contractor may use Reservation roads as necessary during the performance of this contract, but the Nation shall not be held responsible for the condition of the roads. Contractor will indemnify and hold Nation harmless against all claims, costs, expenses and liabilities of any person, including the Nation, its agents and employees, arising out of Contractor's use of the roads.
- D. The Nation may halt planting operations whenever weather conditions are injurious to the trees.
- E. Areas to be planted will be designated as either full planting areas or partial planting areas. Inspection procedures will be the same for both full planting and partial planting areas.

II. Procedures for Hand Tool Planting

A. Hand Tools

- 1. Only hand tools capable of opening a vertical hole, broken out on three sides and at least 10 inches deep will be acceptable. The Nation reserves the right to specify the type of planting tool to be used.
- 2. When clearing and scalping are required, the tool selected must also be capable of cutting and removing the crown of living vegetation on the planting spot, or another tool capable of scalping in advance of planting must be provided. Contractor agrees to repair or replace worn equipment.

B. Plantable Spot Selection

- 1. Trees will be planted in the best available planting spots within the spacing limits. A plantable spot is one where no acceptable tree exists but where mineral soil or other acceptable soil media can be exposed through clearing and scalping as specified in Paragraph II. D. that follows. No

tree will be planted within 10 feet of running surface of a mainline road.

2. Trees shall be planted near stumps, logs, dead brush, or other dead shade so as to provide protection from exposure to summer heat and animal damage.
3. Trees shall not be planted in the depressions of shovel tracks where the soil has been compacted reducing root growth and water drainage, unless directed by the Contract Officer's Representative.

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4. Trees shall be planted when water fills no more than fifty percent (50%) of the planting hole after it is prepared for tree placement (typical of units with high groundwater tables and impervious soils).

C. Spacing

1. The spacing on individual planting units shall be as shown in Exhibit A, and on the planting plans and maps in Exhibit C. When required, the last man in the planting crew will flag his row of seedlings at intervals that will insure correct seedling spacing in the return row (may be used in areas of green slash, high brush, and/or to mark the last row of the day).
2. The spacing between individual planted trees and between planted trees and established, acceptable, natural conifers may vary from the prescribed spacing by as much as 2 feet but **ONLY** when necessary to avoid non-plantable spots. No tree will be accepted as satisfactory if planted closer than 6 feet from the nearest, planted or acceptable, natural conifer.

D. Clearing and Scalping

1. All debris, including compacted slash, duff, ashes, rotten wood and loose rock shall be cleared to a **maximum depth of 10 inches** to prepare a planting spot.
2. When scalping is required by the Nation, shoots of all living plants shall be removed to expose bare mineral soil or other acceptable soil media in a spot at least one foot square.

E. Preparing the Planting Hole

An "open hole" broken out on three sides; deep enough to fully accommodate the tree roots as specified in Paragraph II. F. shall be opened; provided that, the Contractor shall not be required to dig hole deeper than 10 inches. The hole shall be vertical and located as near to the center of the cleared or scalped spot as practicable. The "slit hole" method of opening the planting hole will not be permitted. The hole must be broken loose at the bottom opening a space 3 inches wide or more.

F. Tree Placement in Planting Hole

A single tree shall be suspended near the center of the hole with the roots in a nearly natural arrangement and at a depth that, after filling, packing, and leveling, the soil comes to a point about midway between the top lateral roots and the lower needles or branches. No portion of the roots shall be exposed nor any needles or branches covered with soil. The roots shall not be doubled up, twisted, tangled or bunched.

G. Firmness of Planted Seedling

Moist mineral soil or other acceptable soil media shall be filled in and compacted around the roots, particularly against the roots in the bottom of the hole. Soil compaction shall be such that the tree shall not pull loose by a firm tug on the main stem. Soil around tree shall be level and firm after final hole filling, not "heelprinted", mounded, or dished.

H. Position of Stem and Root

The planted tree shall be left with the root and stem vertical and free to grow.

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I. Condition of Stem

The stem shall not be scarred or bruised during the soil-firming process.

J. Weather

No planting will be allowed when the ground is covered with 2 inches or more of snow or when the soil is frozen to a depth of over 1-inch.

K. Root Pruning

There will be no root pruning of planting stock by planters or Contractor.

L. Bagging up

If trees are to be counted it will be necessary to leave the trees in the container. If trees are removed from the container to be counted and exposed to the air, they will be considered as dropped trees. Trees will not be beaten against objects or shaken to remove the soil from the roots.

III. Inspection and Acceptance

A. Unit Inspection Procedures

1. Each planting unit will be inspected as a separate unit. Units will not be averaged with other units for acceptance or payment.

2. The inspection will be made with a series of plots. Plots will run across the planting crew's line of travel so that a representative sample of each planter's work is obtained. Plots will sample at least 1% of each unit. Inspection will be completed in as timely a manner as possible.
3. Contractor is encouraged to observe the inspection while it is being made and, on request, may obtain final inspection summaries.

B. Plot Inspection Procedures

1. Inspection plots shall be circular and 1/100 acre in area.
 2. The number of plantable spots per plot will be determined by the Nation's inspector, according to the desired spacing and as outlined in Paragraph II.C.
 3. At each plot, the inspector will examine the plot area. Based on all applicable specifications and procedures, the inspector will make the following record of his findings.
 - a. Plantable Spots - Record the actual number of plantable spots present.
 - b. Number of Trees - Record the total number of planted and dropped trees, excluding naturals, within the plot.
 - c. Satisfactory Trees - Record the number of planted trees that meet all applicable specifications.
 - d. Unsatisfactory Trees and Specifications - Record the number of planted trees that fail to meet any one of the specifications. The reason for the unsatisfactory rating shall also be recorded.
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- e. Too Close Trees, Excess Trees, Dropped Trees - Record all other trees, except naturals.
 - f. Naturals - Record the total number of acceptable seedlings existing on the plot prior to planting and the well distributed trees accepted in lieu of planted trees. An established acceptable seedling is at least 4 inches tall and of the following species: Douglas fir, Western hemlock, Western red cedar and Lodgepole pine. All other undamaged, conifers which are a height of at least 4½ feet, shall also be acceptable naturals.

C. Procedure in Case of Unsatisfactory Planting

1. If the number of satisfactorily planted trees divided by the number of plantable spots falls below 90% for any one crew for any part of a day, the Nation's representative will immediately notify the Contractor and/or his representative.

Failure of the Contractor to raise the quality of subsequent planting above the desired 90% level may constitute a default under this agreement.

2. Contractor may be required to replant any area which fails to meet the goals and specifications as described or falls below the 90% level. The Contractor shall not be paid for the unit until this has been done. Payment shall be based on the result of a reinspection.
3. During replanting, a second inspection will be made. This reinspection will be in accordance with the procedure described in Paragraphs III. A., 1-3; and III. B., 1-3.

D. Reinspection upon Contractor Request

1. If the original inspection results are unacceptable to the Contractor and a second inspection is requested, the same inspection procedure will be used with the exception that plots will be located on a 3 chain by 3 chain grid and the inspection plots will not overlap previously inspected plots. Payment will be based on the results of the reinspection. Contractor may observe the reinspection.
2. If the reinspection shows a difference of 5% or less in the average number of satisfactorily planted trees per acre, the Contractor shall pay for the costs of reinspection. If reinspection shows a difference greater than 5% in the average number of satisfactorily planted trees per acre, the Nation shall pay for the costs of reinspection.

IV. Measurement and Payment

A. Method of Measurement

1. The final acreage for any unit will be calculated upon completion of that unit. The area within the boundaries, as established on the ground, is measured on the horizontal plane. All non-plantable areas over one acre in size on each unit is excluded and may be marked with plastic flagging.

B. Basis for Payment

1. The bid rate per thousand satisfactorily planted trees per unit by unit is shown on Exhibit A.

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2. Basis for payment will be per thousand satisfactorily planted trees per unit as determined by the plot inspection procedure. This may not be the same as the total number of trees removed from the shipping bags (bag count) and given to the planting crew for planting in the unit.
3. Payment for planting each unit shall be calculated as

follows:

- a. When the inspection of a unit is complete, the Nation will calculate the total number of satisfactorily planted trees per day by the following formula:

Each individual day's percent of satisfactorily planted trees (calculated from satisfactorily planted trees divided by plantable spots) multiplied by the total trees planted (from bag count) that day equals the daily number of satisfactorily planted trees.

- b. Total payment due for each planting unit shall be calculated as follows:

1) The sum of satisfactorily planted trees per day for each unit equals the total satisfactorily planted trees.

2) Sum of satisfactorily planted trees for each planting day in the unit = total satisfactorily planted trees for unit.

3) Total satisfactorily planted trees for unit x bid rate for unit = total payment for unit.

- c. Size classes are determined from seedling age. All plugs are considered to be equivalent to each other. Two-year old trees, 2+0, P+1, MP1 and 1+1 are considered to be equivalent to each other. All older trees are considered equivalent to each other.

- d. If the number of satisfactorily planted trees divided by the number of plantable spots equals or exceeds 90%, payment will be the full bid price multiplied by the planting quality percentage of the unit.

- e. The Contractor shall receive a decrease in payment according to the following schedule when the number of satisfactorily planted trees, divided by the number of plantable spots, is less than 90%. Units with less than 80% will not be paid until corrective action is taken.

<u>Percent of Plantable Spots</u> <u>Satisfactorily Planted</u>	<u>Penalty</u>
89.0	1% of bid price
88.0	3% of bid price
87.0	5% of bid price
86.0	10% of bid price
85.0	15% of bid price
83.0	20% of bid price
80.0	25% of bid price
Below 80.0	100% of bid price

- f. The Contractor may reimburse the Nation the unit bid rate per thousand satisfactorily seedlings planted (as agreed upon in EXHIBIT A) plus twenty five cents, for

the total number of trees planted too closely in each

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unit, as determined by plot inspection. The total number of too close trees is calculated from the following: Total number of too close trees from inspection report, divided by number of plots taken, multiplied by the reciprocal of the plot size, times the number of acres in the unit.

- g. The Contractor may reimburse the Nation for twenty-five cents (\$.25) per tree if the planted trees per acre exceeds the plantable spots per acre by at least 2%. Planted trees per acre is calculated by the following: Total trees from inspection report minus too close and dropped trees divided by number of plots taken multiplied by the reciprocal of the plot size.
 - h. The Contractor may reimburse the Nation for one dollar (\$1.00) per dropped tree or hidden tree. Dropped or hidden trees found on a plot will be representative of the area.
 - i. The Contractor shall also reimburse the Nation for triple its seedling cost when the total trees planted (bag count) for the unit exceeds the measured total trees planted (inspection) by at least 5%. The measured total trees planted is calculated by multiplying the average planted trees per acre by the unit area. No reimbursement will be required when the discrepancy is less than 5%, but all "missing" seedlings must be reimbursed when the discrepancy is 5% or more.
 - 1) Contractor may request acreage remeasurement of any unit if he/she feels that the size is incorrect. No variance of the unit perimeter as laid out on the ground will be allowed.
 - 2) If remeasurement shows a variance of 5% or less, Contractor shall pay for costs of remeasurement. If remeasurement shows a variation of more than 5% under the stated acreage, the Nation shall pay for remeasurement. In either case, remeasured acreage shall be used in assessing the value of missing seedlings.
 - j. The spacing on any planting unit may be changed at the sole option of the Nation. Contractor agrees that the bid rate per thousand satisfactorily planted trees shall not change due to a spacing modification.
4. Upon completion of each unit and receipt of an invoice, the Nation will begin a progress payment. Ten percent of the invoiced amount will be retained. Final unit payment and

release of the amount retained shall be according to Section III. of this contract.

V. Miscellaneous

- A. Contractor agrees to employ one non-planting foreman for each crew. A crew will consist of not more than 18 planters and not less than 11 planters, unless agreed to by the Contract Officer.
- B. The Nation, at its sole option, may delete any or all units from the planting contract. Addition of units constitutes a modification which must be agreed to by both the Nation and Contractor. Contractor shall make no claim for extra work unless so agreed.

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- C. Upon completion of the work, Contractor shall remove all excess material, tree sacks, tools, and rubbish which have accumulated on the premises and leave same in a clean and satisfactory condition.
- D. Flagging shall be furnished by the Nation and last man in planting crew must flag his row of trees, if directed by the Contract Officers Representative (circumstances may include but not limited to; flagging the last row of the day to locate it in the near or distant future, in areas of green slash or tall brush.)
- E. Attached Exhibit A-2, Estimated Trees per Acre and Bid Price is hereby made a part of this contract.
- F. Attached Exhibit A-3, Planting Schedule Agreement, is hereby made a part of this contract.
- G. Attached Exhibit A-4, Planting Plans and Maps are hereby made part of this contract.

**STANDARDIZED
QUINAULT 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 September 30, 2016 (“**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 _____ (“**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 executed by the parties from time to time during the Term (as defined in Section 7 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) and will be signed by both parties. Contractor is not obligated to perform any Services, and the Nation has not contracted for any Services, unless and until a Service Exhibit is executed by both parties. All executed Service Exhibits are incorporated into this Agreement upon their execution.
- (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 Jimmy Hargrove. The Nation may change its Contract Officer by written notice to Contractor. The Contractor’s Contract Officer for this Agreement is _____.
- (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 remains 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 signed Debarment Certification 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) 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 2.2 below) and whether it was delivered pursuant to the applicable Schedule. If the Nation rejects the Work deliverable, Contractor will have thirty (30) 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 7 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. **Payment and Recordkeeping.**

2.1. *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 \$XXX. All payment(s) will be made pursuant to the terms of this Agreement, including the terms of this Section 2.

2.2. *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.

2.3. *Payment Terms.*

(a) *Retention.* The Nation will retain 0 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 2.1, 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 2.3(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 Contract 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.

2.4. *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.

- 2.5. *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.
- 2.6. *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.

3. Intellectual Property.

- 3.1. *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.
- 3.2. *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.
- 3.3. *Moral Rights.* To the maximum extent permitted by law, Contractor waives all moral rights in the Work.
- 3.4. *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 3.2 and 3.3. 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.
- 3.5. *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 3.5 to the Nation's Materials and no additional rights are granted to Contractor in the Nation's Materials, whether by implication, estoppel or otherwise.

4. **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 marks as “confidential” or “proprietary” (or some similar designation) 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.

5. **Representations and Warranties.**

Contractor represents and warrants to the Nation that:

- 5.1. 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;
- 5.2. Contractor has not been debarred or suspended, or proposed for debarment, under federal procurement regulations;
- 5.3. Contractor will not subcontract any of its obligations under this Agreement to any entity or person who is debarred or suspended, or proposed for debarment, under federal procurement regulations;
- 5.4. 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;
- 5.5. 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;
- 5.6. 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;
- 5.7. Contractor will obtain all licenses and permits necessary to perform the Services;
- 5.8. Contractor will obtain and maintain during the Term a Quinault Indian Nation business license;
- 5.9. 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;
- 5.10. 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;
- 5.11. Contractor has all necessary rights in the Work to transfer ownership to the Nation as required under Section 3 above;
- 5.12. Contractor will comply with all applicable laws in the performance of its obligations under this Agreement including, without limitation, applicable federal and state regulations regarding student records, student privacy, and the commercial use of student information; and
- 5.13. The Work will be performed in a professional manner and will be of a high grade, nature, and quality.

6. Limitation of Liability/Indemnification.

- 6.1. **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.
- 6.2. *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 5 above, or (b) arises out of Contractor's negligent or willful misconduct.
- 6.3. *Procedure.* If any action is brought against the Nation for which Contractor is obligated to provide a defense under Section 6.2 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 6.2. Neither party will settle any claim for which indemnification is sought under Section 6.2 without the other party's prior written consent, which consent will not be unreasonably withheld.
- 6.4. *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 6.2 and 6.3, 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.

7. Termination.

- 7.1. *Term.* This Agreement will commence on the Effective Date and expire on June 30th, 2017, unless earlier terminated as provided in this Section 7 ("Term").
- 7.2. *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) 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 7.2(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 2.2 and 7.2(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) 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.

7.3. *Effect of Termination.* Within ten (10) 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 2 (for amounts due and owing upon expiration or termination), 3, 4, 5, 6, 8, 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 7.3 shall apply only to those Service Materials relevant to the Service Exhibit that is expiring or being terminated.

8. **Insurance Coverage.** Contractor will obtain and maintain the following insurance and will give 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.

	Quinault Indian Nation Contact Person	Contractor Contact Person
Name, Title		
Party	Quinault Indian Nation	
Address	P.O. Box 189	
City, State, Zip	Taholah, WA 98587	
Phone	360-276-8215 ex. 621	
Facsimile	360-276-4682	
Copy to:		

10. Sovereign Immunity.

10.1. *Limited Waiver.* Provided 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) The 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.
 - (c) The claim seeks either:
 - 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 insurance, and not from any other source, asset or property of the Nation.
 - (d) The claim is brought in the Quinault Tribal Court.
- 10.2. 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 Contract 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.

CONTRACTOR	QUINAULT INDIAN NATION
By: _____	Contract Officer: _____
Printed Name: _____	Division Director: _____
Title: _____	Office of Attorney General: _____
Date: _____	Grants and Contracts: _____
	QBC Executive: _____