

CULTURAL RESPECT AND USE AGREEMENT  
ANNOTATED TEMPLATE FOR MAINE

DRAFT 4-17-2019

THIS CULTURAL RESPECT AND USE AGREEMENT (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019 (“Effective Date”) between

The INSERT TRIBAL ENTITY FORMAL NAME, having a mailing address of \_\_\_\_\_, (“*TRIBE*”) and \_\_\_\_\_, a Maine [nonprofit corporation][or identify other kind of entity or individual], having a mailing address of \_\_\_\_\_ (“Land Holder”).

**BACKGROUND:**

The *TRIBE* is part of the Wabanaki Confederacy, and Wabanaki people have lived in what is now the State of Maine for thousands of years, in harmony with the area’s spiritual and natural features. The Wabanaki Confederacy (Waponahki) — translated as “People of the First Light” or “Dawnland” — currently comprises four principal nations within what is now called the State of Maine: the Mi’kmaq, Maliseet, Passamaquoddy, and the Penobscot.

The Land Holder is the owner of certain real property that was originally used by ancestors of the *TRIBE* members.

This real property is located at \_\_\_\_\_ [street, or on waterway], in what is now known as the Town of \_\_\_\_\_, \_\_\_\_\_ County, State of Maine, as more particularly described in a deed granted to the Land Holder on \_\_\_\_\_ [date] and recorded in the \_\_\_\_\_ County Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_, and depicted on Exhibit A, incorporated by this reference (the “Property”). [The Property is protected by a conservation easement dated \_\_\_\_\_ and recorded in said Registry at Book \_\_\_\_\_, Page \_\_\_\_\_.]

The Property includes/contains significant cultural values (collectively “Cultural Values”) of significant or longtime importance to the *TRIBE* and the Land Holder, including the following:

- .....
- .....
- .....

The Property also contains conservation values (“Conservation Values”) protected by the Land Holder and respected by the *TRIBE*, including the following:

- .....

The Cultural Values and the Conservation Values of the Property are further documented in a [Baseline Documentation, Natural Resource Inventory, Values Inventory and Map, or

**Commented [RHL1]:** This document is a template and requires additional information before it would be a workable agreement. Any area highlighted in grey requires the inputting of specific information, or consideration of how to tailor the agreement to the particular aspects of this property.

**Commented [CU2]:** Choose a term or *TRIBE* to use throughout the document – *Tribe* is used as a placeholder just for this example

**Commented [RHL3]:** The Land Holder can be a nonprofit corporation, a municipal government, a for-profit corporation, or even an individual. The kind of entity would be noted here after the *TRIBE*.

**Commented [RHL4]:** Exhibit A should be a map of the Property, and should show any natural features that are referenced in the Agreement (e.g., Sweetgrass stand, ceremonial area, parking area, etc).

**Commented [RHL5]:** Reference conservation easement here, if applicable.

**Commented [RHL6]:** Describe specific Cultural Values here, such as an existing stand of Sweetgrass, a stand or grove of birch or ash trees, specific geological resource such as flint or clay, or a feature such as a traditional ceremonial history...

**Commented [RHL7]:** Describe Conservation Values here such as intact, multi-age stands of Northern spruce-fir forest and associated habitat, areas of wetlands, stretch of undeveloped shoreline or road frontage, and perhaps trails or areas used by the general public for recreational or educational purposes.

**Commented [RHL8]:** Sometimes the Land Holder has a separate document that describes these values in more detail. If so, it should be referenced here.

[Management Plan] which is not a part of this Agreement, but which was prepared by the Land Holder and has been shared with the *TRIBE*.

The *TRIBE* wishes to honor the Cultural Values of the Property by engaging in certain cultural practices as further set forth in this Agreement, including [select or describe as appropriate - sustainable harvesting activities, sustainable excavation activities traditional spiritual ceremonies, seasonal celebrations, offerings, and cultural education] (the “Cultural Uses”).

The Land Holder manages the Property for conservation purposes consistent with its mission and with protecting the Cultural Values and Conservation Values.

In consideration of the above and the mutual terms and conditions contained herein, the Land Holder and the *TRIBE* hereby agree to the following specific terms of this Agreement.

### **1. Purpose.**

The Parties enter into this Agreement based on their shared respect and care for the Property and for its land, water and plants and wildlife that live in and on them and based on respect for history and historic uses of land and its resources. It is the purpose of this Agreement to recognize history, and honor and facilitate the *TRIBE*'s or Entity's access to the Property for Cultural Uses that are consistent with perpetual protection of the Cultural Values and Conservation Values of the Property.

### **2. Term.**

This Agreement shall remain in effect for five (5) years from the Effective Date, unless terminated earlier in accordance with Section [ ]. This Agreement may be renewed or extended upon the mutual written consent of the *TRIBE* and the Land Holder.

### **3. Cultural Uses By The *TRIBE*.**

The *TRIBE* is hereby granted the right to engage in the following Cultural Uses on the Property, subject to the conditions and limitations set forth herein: *[[choose from the following only as needed or appropriate – these are just to provide options and ideas, and always will vary depending on the situation or resource]]*

(a) Harvesting or Extraction of [ ]:

(1) The *TRIBE* shall be permitted to engage in the [planting, cultivating, harvesting] OR [extraction] of [sweetgrass (*Hierochloe odorata*)] OR [brown ash (*Fraxinus nigra*) wood] OR [birch bark] OR [red clay] OR [flint] in accordance with the following limitations:

- (i) Location limitations –
  - a. Certain areas of the Property only?

**Commented [RHL9]:** It's good practice to include a purpose statement up front, so everyone is clear as to what this Agreement is all about. The purpose statement here is a suggestion, and can be refined as the parties see fit.

**Commented [RHL10]:** It is important to think about the right time duration of the Agreement, with the understanding that it can always be renewed or extended. For some properties, one or two years might be appropriate as a trial period, with a lengthier term thereafter. We suggest 5 years in order to give the parties enough time to get to know each other. In any event, it is best to think about what is appropriate for the resource and situation.

**Commented [RHL11]:** A property may have a single plant species or mineral to harvest, or multiple species or minerals. We have mentioned the most common plants and minerals here. Choose whichever ones apply. If there are multiple resources chosen, it will probably be easier to structure the Agreement so that the limitations are specific to each plant or mineral, and not grouped together.

**Commented [RHL12]:** Both Parties want to see the Cultural Uses and Cultural Values remain sustainable over the long term. There is no single formula for sustainability, as each plant is different and each property is different. The following limitations are a menu of items that can be selected as best fits each material. Some cultural uses might require very light limitations, such as simple date and time restrictions. Others that are more sensitive and rare might require tighter controls.

**Commented [RHL13]:** Perhaps the simplest form of limitation is to allow the harvest/extraction only from a particular portion of the Property that is easily identified. For example, only south of the road, or only in the stand of trees in the northwest corner of the property. Another variation would be to set area limits. For example, if there is a 100 square-foot patch of sweetgrass, you could agree that no more than 50 square feet would be harvested during the term of the Agreement. Location and size limits will be especially important for any mineral extraction activities.

- b. Certain areas off-limits?
- (ii) Seasonal or date limitations?
  - a. Certain times of year only? – E.g., \_\_\_\_\_ harvesting activities shall be conducted only in the months of \_\_\_\_\_.
  - b. Certain blackout dates? -- E.g., if Land Holder has a big event on the Property -- \_\_\_\_\_ harvesting activities shall not be conducted on days reserved by the Land Holder for certain events, as communicated to the *TRIBE* at the Annual Meeting or at least thirty (30) days in advance of such dates.
- (iii) Time of day limitations?
  - a. Daylight hours only? – \_\_\_\_\_ harvesting activities shall be conducted only during daylight hours.
- (iv) Annual harvest limits?
  - a. Specific number written into this agreement, subject to amendment – No more than \_\_\_\_\_ bundles/pounds/cords of \_\_\_\_\_ shall be harvested in any calendar year, except with the written consent of the Land Holder.
  - b. Specific number as determined between the *TRIBE* and Land Holder at the Annual Meeting – The annual harvest of \_\_\_\_\_ shall not exceed a specific threshold, to be determined annually by the Land Holder and the *TRIBE* at the Annual Meeting and reported in the notes of such meeting. In the absence of the Annual Meeting or the absence of notes from the Annual Meeting, the Land Holder shall have the right to unilaterally set the annual harvest limitation.
- (v) Reporting Requirements? – Any individual or group who engages in harvesting \_\_\_\_\_ on the Property shall report the amount of \_\_\_\_\_ harvested to the *TRIBE*'s Contact Person within 24 hours of such harvest. The *TRIBE*'s Contact Person shall report the aggregate amounts harvested in the preceding month and in the year to date to the Land Holder on or before the fifth day of the succeeding month, either in writing or orally, unless no \_\_\_\_\_ has been harvested in the preceding month, in which case no monthly report is required.
- (vi) Structures limitations?
- (vii) Membership Requirements? *NOTE: this concept is only mentioned in case there is a potential issue with non tribal people harvesting or overharvesting and presenting a problem to the Tribe... to give the Tribes a way to enforce only Tribal members can use a right. This many not ever be necessary or appropriate to incorporate but seemed worth mention.*
  - a. The *TRIBE* shall be in charge of who may use any or all of these harvesting rights. [One option to have in here to give the Nation or Entity enforcement rights]: Individual harvesting by Enrolled Members - \_\_\_\_\_ harvesting may be conducted only by Enrolled Members of the *TRIBE*. No Enrolled Member shall engage in harvesting activities except while carrying a valid picture identification card issued by the *TRIBE*, or other form of identification approved by the *TRIBE* for such harvest activities.
    - i. Immediate family members of Enrolled Members also allowed? -- No Enrolled Member shall allow any person who is not an Enrolled

**Commented [RHL14]:** It may be difficult to know in advance the right level of harvest limits, and then to keep track of these amounts as time passes. So this limitation will require more active reporting and recordkeeping.

**Commented [RHL15]:** If there is any concern about overharvesting, then reporting requirements are probably a good idea, although they could also be hard to enforce.

**Commented [RHL16]:** Are any structures necessary for the cultivation or harvesting or extraction? If so, details on what's allowed should be included here. If there's a conservation easement, care must be taken to confirm that any such structures are allowed.

**Commented [RHL17]:** Membership requirements may not be necessary for most Cultural Use and Respect Agreements, but rather only where overharvesting is anticipated to be a problem, and if the Tribe/Band is concerned about other people using or harming the place and endangering their rights here per this agreement.

Member to assist, and no such person shall assist, in the \_\_\_\_\_ harvesting activities authorized by this Agreement except the Enrolled Member's immediate family, including but not limited to \_\_\_\_\_ grandparents, parents, spouses, siblings, children, grandchildren, and great grandchildren, provided that the Enrolled Member is present when the assistance is rendered.

- b. Individual harvesting by Enrolled Members who obtain a written permit – \_\_\_\_\_ harvesting may be conducted only by Enrolled Members of the *TRIBE* who obtain a prior written permit from the *TRIBE*'s Contact Person. No Enrolled Member shall engage in harvesting activities except while carrying said permit.
- c. Group harvesting only? – \_\_\_\_\_ harvesting may be conducted only in groups, not to exceed ( ) persons at any one time, under the supervision of an agent of the *TRIBE*.
  - i. Include notice requirement for group harvesting? – The *TRIBE* shall provide the Land Holder prior oral or written notice of any such group harvest.

(viii) Emergency Closure? - Notwithstanding any other provision of this Agreement, the Land Holder/Land Owner shall have the right to order the closure of any harvesting or extraction activity on the Property generally or with respect to a particular location, whenever the continuation of the harvest or extraction is likely to cause biological harm to the species or the Property, in the sole discretion of the Land Holder.

**Commented [RHL18]:** Given the many uncertainties, it is probably a good idea to include this emergency closure provision.

(b) Ceremonial Activities. The *TRIBE* shall be permitted to engage in spiritual and ceremonial activities such as but not limited to dances, music playing, tipi setting and overnight use, memorials, and celebrations, in accordance with the following limitations:

- (i) Location limitations –
  - a. Certain areas of the Property only?
  - b. Certain areas off-limits?
- (ii) Seasonal or date limitations –
  - a. Certain times of year only? – Ceremonial activities shall be conducted only in the months of \_\_\_\_\_.
  - a. Certain blackout dates? (E.g., if Land Holder has a big event on the Property) -- Ceremonial activities shall not be conducted on days reserved by the Land Holder for certain events, as communicated to the *TRIBE* at the Annual Meeting or at least thirty (30) days in advance of such dates.
- (iii) Time of day limitations –
  - a. Daylight hours only? – Ceremonial activities shall be conducted only during daylight hours.
- (iv) Number of persons limitations --
  - a. Limited to a specific number of participants?
- (v) Use of fire – Fire on a property that is open to public use can attract attention, or present a real or perceived danger. Ceremonial activities may involve the use of

**Commented [RHL19]:** The limitations shown here are similar to the ones above for harvesting and extraction activities. Again, for many ceremonial activities there will not be the need for all of the following limitations. Rather, they are presented here as a menu from which to choose the ones that make the most sense for the anticipated level of activity and the sensitivity of the property.

**Commented [RHL20]:** Fire is the most dangerous activity and careful thought should be given to appropriate limitations on the use of fire.

fire only upon the prior written consent of the Land Holder, and only within the parameters and permits of Maine state law and regulations, and any municipal regulations. Said use of fire may be limited to certain locations or times, or conditioned upon the taking of specific safety measures. Use of fire in violation of the limitations or safety standards established by the Land Holder is grounds for immediate termination of this Agreement by the Land Holder, given the risks to the Cultural Values and Conservation Values of the Property.

- (vi) Structures limitations? Details on what's allowed should be included here.
- (vii) Notice requirements?
- (viii) Ceremonial activities by individuals, or only under *TRIBE* supervision?

(c) **Signs.** Upon the prior written consent of the Land Holder, the *TRIBE* shall have the right to erect unlit, temporary plaques, signs and other temporary interpretive displays for public education regarding the Cultural Uses of the Property.

**Commented [RHL21]:** For the typical Cultural Respect and Use Agreement, signs will not be necessary given the occasion nature of the use. But this section is included here as an option to consider.

#### **4. Access.**

In order to engage in the Cultural Uses set forth in Section 3, the *TRIBE* shall have the following access rights to the Property: [[choose as appropriate]]

- (a) **Pedestrian access only** – The *TRIBE* shall have the right to access the Property only on foot. Vehicular parking shall be off the Property, in a location designated by the Land Holder.  
OR
- (b) **Parking in designated location, pedestrian access otherwise** – The *TRIBE* shall have the right to park vehicles in the designated parking area on the Property, and shall otherwise access the Property on foot.  
AND/OR
- (c) **Other access rights tailored to specific Property.** E.g., if vehicles are needed to haul wood or set up ceremonies, specify those details here.

**Commented [RHL22]:** Consider what kinds of access are appropriate to the anticipated uses. In many if not most cases, pedestrian access will suffice. But if a temporary structure is going to be erected for a ceremony, then temporary vehicular access might be appropriate.

The *TRIBE* acknowledges that its access to the Property is not exclusive and may be shared with employees or agents of the Land Holder, except if temporary exclusive use is approved in writing by the Land Holder for specific time-limited events. Except as expressly consented to by the Land Holder, no individual or group engaged in Cultural Uses pursuant to this Agreement shall impair or obstruct developed recreational trails or other recreational areas open to the general public.

#### **5. Prohibited Uses.**

Any activity on or use of the Property by the *TRIBE* or its Enrolled Members that is inconsistent with the purpose or express provisions of this Agreement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited: cutting of any vegetation other than specified in this Agreement, charging of a fee for entry or harvest, road

building, mining or surface disturbance other than specified in this Agreement, hunting, trapping, camping, or the use of fire other than specified in this Agreement.

## **6. Communication.**

(a) Contact Persons. Each party shall designate a Contact Person to serve as a point of communication for the other party. The initial Contact Persons shall be as follows:

- *TRIBE* Contact Person: NAME, mailing address, phone, and email.
- Land Holder Contact Person: NAME, mailing address, phone, and email.

Either party may from time to time designate a replacement Contact Person by written notice to the other.

(b) Annual Meeting. Absent an agreement to the contrary, the respective Contact Persons for the Land Holder and the *TRIBE*, or their designees, shall meet annually at a date, location and time convenient for the parties to review and discuss any questions or concerns regarding the activities conducted pursuant to this Agreement. The annual meeting may take place by videoconference at the request of either party.

**Commented [RHL23]:** It is a good idea to establish regular contact between the parties. We suggest at least holding an annual meeting, with other communications in between.

(c) Notices. Any notice, demand, request, consent, or communication that either party desires or is required to give to the other shall be in writing, unless expressly permitted in another section of this Agreement to be oral, and sent by personal delivery, first class mail, or electronic mail to each party's respective Contact Person.

## **7. Dispute Resolution.**

(a) Informal Dialogue. The *TRIBE* and the Land Holder desire that issues arising from time to time concerning the interpretation of this Agreement, or any use or activity on Property, will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, if either party becomes concerned about whether any proposed or actual use, activity, or failure to take action (which together for the purposes of this Section 7 shall be referred to as the "Activity") complies with this Agreement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue

**Commented [RHL24]:** It is wise to anticipate and plan for what happens in the event of a disagreement. This agreement calls for a graduated response from informal dialogue to formal mediation to, as a last resort, court action.

(b) Mediation. If informal dialogue does not resolve a disagreement regarding the Activity, and if the *TRIBE* agrees not to proceed or continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within thirty (30) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Each party shall pay its own legal fees and other associated costs, and the costs of mediation shall be split equally between the parties.

Mediation shall be conducted in accordance with rules selected by the mediator or otherwise mutually agreed upon by the parties.

- (c) Termination or Legal Action. In the event that mediation pursuant to Section 7(b) does not resolve the dispute or, notwithstanding Section 7(b), if the Land Holder believes that an Activity by the *TRIBE* has caused, is causing or may cause substantial harm or damage to the Conservation Values of the Property, the Land Holder may unilaterally prohibit the Activity. If the Activity does not cease, the Land Holder may do any or all of the following: (i) terminate this Agreement upon notice to the *TRIBE*, (ii) require the *TRIBE* to restore the Property to its prior condition; and/or (iii) file suit for a temporary restraining order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to cause the cessation of the Activity.
- (d) Cost of Enforcement. Any costs incurred by the Land Holder in ensuring compliance with this Agreement against the *TRIBE*, including without limitation, costs of suit and attorney's fees and any costs of restoration necessitated by the *TRIBE*'s violation of the terms of this Agreement shall be paid by the *TRIBE*.

**Commented [RHL25]:** Because the Land Holder essentially bears all of the risk in inviting the Tribe/Band on its land, it makes sense for any of the Land Holder's enforcement costs to be paid by the Tribe/Band.

## **8. Liability.**

- (a) The Land Holder shall not be responsible for any unlawful or unauthorized actions of the *TRIBE* or its agents, members or invitees. The *TRIBE* shall assume all risks in engaging in any activities on the Property. The *TRIBE* and any individuals engaging in Cultural Uses permitted under this Agreement shall be responsible for ensuring that all such Cultural Uses take place only on the Property and not on any adjacent property, except with the prior written permission of the owners of such adjacent property.
- (b) The *TRIBE* agrees to release, defend, indemnify and hold harmless the Land Holder, its officers, trustees, agents and employees from and against any and all losses, damages, penalties, fines, claims, suits or actions, judgments and costs (including reasonable attorneys' fees) arising out of any injury to or death of persons or damage to the Property and to personal property on or about the Property or adjacent or nearby real property in connection with any the exercise of the rights of the *TRIBE* set forth in this Agreement, except to the extent caused by the intentional or negligent acts or omissions of the Land Holder, its employees, agents or contractors.
- (c) The parties intend that all Cultural Uses shall fall within the scope of the Maine recreational use statute, 14 M.R.S. § 159-A, which provides immunity for landowners who don't charge a fee for access to their property for recreational and harvesting activities.
- (d) The *TRIBE* agrees to maintain commercial general liability insurance that names the Land Holder as an additional insured, for at least \$1 million in coverage per occurrence.

**Commented [RHL26]:** The paragraphs in this Section 8 are standard ways in which a party would reduce its liability exposure in the event something goes wrong. Basically, the Tribe/Band is agreeing that it won't sue the Land Holder for any damages or losses, and that if the Land Holder is sued by anyone else (e.g., by a neighbor who claims encroachment), then the Tribe/Band will defend the Land Holder in court and/or reimburse it for any legal fees.

**Commented [RHL27]:** Fortunately, Maine has a very broad recreational use statute, and all of the Cultural Uses envisioned under this kind of agreement are probably covered by the statute. So even if someone is hurt while engaging in a Cultural Use, the Land Holder will not be liable.

**Commented [RHL28]:** This insurance requirement is not necessary, but will offer additional protection to the Land Holder.

## **9. Amendment.**

If circumstances arise under which an amendment to this Agreement would be appropriate, the *TRIBE* and the Land Holder are free to jointly amend this Agreement. However, this Agreement cannot be amended without written approval by both the *TRIBE* and the Land Holder.

**10. General Provisions.**

- (a) Controlling Law. The interpretation and performance of this Agreement shall be governed by laws of the State of Maine.
- (b) Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provisions to persons or circumstances other than those as to which is found to be invalid, as the case may be, shall not be affected thereby.
- (c) Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Agreement, all of which are merged herein.
- (d) No Waiver. Enforcement of the terms of this Agreement shall be at the discretion of either party, and any forbearance by either party to exercise its rights under this Agreement shall not be deemed or construed to be waiver by the other party. No delay or omission by either party in the exercise of any right or remedy upon any breach by the other party shall impair such right or remedy, or be construed as a waiver.
- (e) Assignment. This Agreement is non-transferable and does not extend to successors or assigns of the *TRIBE* or the Land Holder.
- (f) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not part a part of this instrument and shall have no effect upon construction or interpretation.

In witness hereof, on dates set forth below, the latter of which shall be the Effective Date, both parties are in agreement.

TRIBE

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By:  
Title:  
Date:

LAND HOLDER

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By:  
Title:  
Date:

**EXHIBIT A**  
**Sketch Map of the Property**

