

**RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION**

**WHEREAS,** pursuant to Resolution 03-2002-49, the White Mountain Apache Tribe applied for and has been granted funding from the First Nations Development Institute to conduct an assessment of the Tribe's forest management practices for the purpose of adopting commercial forest certification standards for Tribal forests; and

**WHEREAS,** the certification of the Tribal forestry program could provide additional assurance to consumers of the Tribe's sound forest management practices and help develop additional commercial markets for the Tribe's forest products; and

**WHEREAS,** the Tribal Forestry Department has sought qualified consultants and has determined Scientific Certification Systems (SCS) to be the best qualified to complete the forest assessment for the Tribe; and

**WHEREAS,** SCS completed a preliminary assessment in October, 2001 and found that the tribal forest management program is well-position to achieve certification upon completion of a full assessment; and

**WHEREAS,** completion of the assessment does not oblige the White Mountain Apache Tribe to complete certification.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the forest assessment and approves of the selection of Scientific Certification Systems to conduct the assessment.

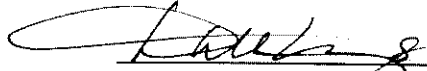
**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby authorizes the Tribal Chairman, or in his absence, the Vice Chairman, working with Tribal Legal Department and Tribal Forestry Department, to complete final contract details and to sign the contract with SCS, total compensation not to exceed the amount of grand funding, to carry out the forest assessment.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs Mr. Paul DeClay, Tribal Forester, will report back to the Tribal Council upon completion of the assessment with a recommendation as to whether to complete certification.

The foregoing resolution was on June 5, 2002 duly adopted by a vote of SEVEN for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (b), (h), (i), (s), (t), and (u) of the Constitution of the Tribe, ratified

**Resolution No. 06-2002-106**

by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

  
Chairman of the Tribal Council

  
Secretary of the Tribal Council

**SCS FOREST MANAGEMENT**  
**STANDARD CERTIFICATION AGREEMENT**

This SCS Forest Management Certification Agreement is made and entered into this 11th day of April, 2002, by and between Scientific Certification Systems, Inc. ("SCS"), a California corporation, Park Plaza Building, 1939 Harrison Street, Suite 400, Oakland, California 94612, and *the White Mountain Apache Tribe ("TRIBE"), a Federally-recognized Indian Tribe in East-Central Arizona. The Tribal contact person shall be Paul Declay, Tribal Forester, White Mountain Apache Tribe, P.O. Box 700, Whiteriver, AZ 85941 (928) 338-1665.*

1. INTRODUCTION

SCS has designed and developed a forest management certification program (the "Forest Conservation Program") for forest products (referred to herein as "Product"). This certification (referred to herein as "Certification Program") consists of 1) an evaluation of forest management operations for their degree of compliance with specified certification standards of sustainability, and; 2) an evaluation of manufacturing and distribution operations to track the flow of certified raw material to a final product (see chain-of-custody contract). An Evaluation Report containing the results of the forest management evaluation is provided to the TRIBE. A wood product derived from forests determined to meet the minimum certification standards ("STANDARDS") established by SCS, and accredited by the Forest Stewardship Council (FSC), (described in the SCS Forest Conservation Program Description and Operations Manual, October, 1995), shall be eligible for receiving a certification label with an accompanying statement of the specific claim, "Certified Well-Managed", to the product in a design approved by SCS and in accordance with the FSC Logo Guide (Volume 1, August 1997). SCS shall provide services under this Certification Program to the TRIBE and shall certify the Product of the TRIBE in accordance with the terms and conditions of this SCS STANDARD CERTIFICATION AGREEMENT (the "Agreement").

## 2. WORK ORDER

Based on the information obtained during initial interviews, preliminary visits and other information provided to SCS by the TRIBE, SCS shall evaluate the management operations of the TRIBE in accordance with a work order submitted to the TRIBE by SCS. SCS shall provide to the TRIBE a quote for all services to be rendered pursuant to the Work Order. Upon the acceptance of a Work Order by the TRIBE, SCS shall perform the services specified in the Work Order. If the Product is found to meet all of the Standards required for certification by SCS, such Product shall qualify as a "Certified Product."

## 3. FULL DISCLOSURE BY THE TRIBE

### A. Full Disclosure Information

The TRIBE shall fully disclose to SCS all information which is necessary for SCS to conduct its evaluation, which may include, but not be limited to: (a) a review of the forest management plan, (b) a review of the forest inventory data, (c) biodiversity data, (d) maps indicating roads and waterways, (e) interviews with community leaders and Tribal employees, and (f) any additional records required by SCS to conduct its evaluation. All disclosures required hereunder shall be made in a format acceptable to SCS. Failure to provide information requested as necessary by SCS could preclude completion of its evaluation.

### B. Ongoing Disclosure Obligations of the TRIBE

The TRIBE shall notify SCS orally within 3 business days of any fundamental departure from the certified long-term forest management plan or management philosophy, such as a sudden and substantial revision of the total decade harvest level. Such notification shall be confirmed in writing by the TRIBE to SCS within 5 business days of the TRIBE'S oral notice to SCS.

#### 4. INSPECTION RIGHTS OF SCS

SCS shall have the right, at any time during normal business hours, with prior approval of the TRIBE, to inspect the premises of the TRIBE'S operation and to audit written documents that are subject to disclosure to SCS under this agreement in order to carry out the Certification Program in connection with this Agreement.

In addition, subsequent to certification, SCS shall have the right, at any time, to provide prior written notice to the TRIBE and, with the TRIBE'S approval, to conduct a short notice inspection of the TRIBE'S operations- and audit production records. The TRIBE acknowledges that refusal to allow a requested short notice inspection could lead to suspension or revocation of certification. Short notice is defined as 24 hours, conveyed orally with email follow-up.

#### 5. CONTINUING CERTIFICATION OBLIGATION OF THE TRIBE

On-site audits of Certified companies are required on a yearly basis as specified by the evaluation report for the Forest Conservation Program **Operations Manual**. Specific obligations pertaining to this yearly audit are also contained within the final Evaluation Report.

#### 6. SCS CERTIFICATION MARKS AND TRADEMARKS

A. SCS is the owner and/or licensee of certain certification marks (the "Certification Marks"). SCS grants to the TRIBE a non-exclusive, non-transferable license, on the terms and conditions set forth in this Agreement, to affix the Certification Marks to any PRODUCT which SCS has determined qualifies as a CERTIFIED PRODUCT. In conjunction with any use of the Certification Mark, or other reference to the Certification, the TRIBE shall state the specific nature of the Certification received in language and in a graphic representation reviewed and deemed acceptable by SCS (in

accordance with Exhibit B, "Guidelines for Use of SCS Certification Marks", and the FSC Logo Guide). SCS shall have the rights to preview and approve the use of its name, Marks, the FSC's name and Mark, or any representation of its Certification Program before publication, printing, or other use by the TRIBE. This right includes the right to preview any other environmental claims or representations made by the TRIBE in connection with the PRODUCT in advertising or promotional materials or on labels, which have been certified by SCS. In addition, the TRIBE shall notify all purchasers of the CERTIFIED PRODUCT of the restrictions which apply to the use of the Marks, SCS or FSC name, or other representation of the Certification, to prevent misuse or misrepresentation by the purchaser and to inform the purchaser of the Chain-of-Custody obligations for representing this claim in the marketplace. (See Exhibit A).

B. Unless terminated as provided herein, the term of this license with respect to any PRODUCT shall be valid for five (5) years (subject to annual audits).

C. The TRIBE acknowledges that the SCS trademarks, service marks, trade names, logos, commercial symbols, insignias, and designs (collectively, the "Marks") are the exclusive property of SCS. If SCS notifies the TRIBE that it objects to a use of a Mark by the TRIBE, the TRIBE agrees to cease such use promptly. The TRIBE agrees that it will do nothing inconsistent with SCS' ownership, that it will not attack the validity of this License or SCS' title to any of the Marks, and, if requested by SCS, that it will assist SCS or its appointed agent in recording this Agreement with appropriate governmental authorities. Nothing in this Agreement shall give the TRIBE any right, title, or interest in the Marks other than the right to use the Certification Mark or the name "SCS" in accordance with this License.

D. The TRIBE covenants and agrees (i) that any product with respect to which it affixes or otherwise uses any Certification Mark or which it represents to conform to the standards of the SCS certification program shall in fact conform to those standards and shall in fact be a CERTIFIED PRODUCT, and (ii) that it will not misrepresent the standards or the nature of the certification program in any way.

E. The failure of the TRIBE to conform to the terms, conditions and covenants contained in this Agreement shall entitle SCS, at SCS' sole discretion, to terminate the license granted hereunder. Termination would occur only after written notice of the asserted default has been made by SCS to the TRIBE, and the TRIBE has failed to correct the asserted default within 10 business days. The TRIBE agrees that the breach

of any term, condition, or covenant contained in this Section 6, or any unlicensed use of any of the Marks, may cause irreparable injury to SCS for which there is no adequate remedy at law, and therefore agrees that, in the event of any such breach or unlicensed use, and notwithstanding any provision to the contrary in this Agreement (including without limitation Paragraph 9.B.), SCS shall be entitled to seek to obtain preliminary and permanent injunctive relief preventing the TRIBE'S continued use of the Marks.

F. The TRIBE shall immediately notify SCS of any apparent infringement of, or challenge or claim by any person relating to, any of the Marks. SCS shall have the exclusive right to control as it sees fit, in its sole discretion, any settlement, litigation, or other proceeding relating to such infringement, challenge, or claim, or otherwise relating to any Mark.

G. *The TRIBE may terminate this Agreement with respect to any PRODUCT for any reason upon 10 days written notice to SCS.*

#### 7. FEES

Fees shall be paid in full when due in accordance with each Work Order approved by the TRIBE. The TRIBE shall be liable for all fees agreed to under each Work Order, or for those portions of the Work Order for which services have been rendered, whether or not the TRIBE'S PRODUCT becomes certified by SCS or is sold by the TRIBE, with or without certification. If any invoice is not paid when due, the TRIBE shall be liable for interest at a rate of 10% per annum from the due date to the date of payments. **Fees are generated on a time and materials basis employing project-specific labor budgets and hour/daily rates and conveyed in a work order. Work will not proceed until a signed authorization of the work order is received by SCS.**

#### 8. CONFIDENTIAL INFORMATION

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A. Confidential Information of the TRIBE

SCS agrees that SCS shall not disclose, communicate or publish, without the written permission of the TRIBE, any confidential information provided by the TRIBE to SCS except as required by law. SCS will take all reasonable measures to prevent unauthorized disclosure of the information known by SCS relating to the TRIBE'S PRODUCT, *operations, natural and cultural resources, and any other information that the Tribe considers to be confidential.* The TRIBE understands and agrees that the confidential information provided to SCS by the TRIBE may be disclosed to officers, director, agents and employees of SCS and any additional personnel contracted by SCS only in so far as is needed by SCS to cause its services to be completed. *SCS agrees that all such officers, directors, agents, employees and contractors of SCS shall be required to maintain the confidentiality of the Tribe's confidential information.* The TRIBE understands and agrees that SCS's retail clients or their designated agents will receive SCS certified PRODUCT status reports which will list the pertinent information about PRODUCTS which have achieved SCS certification status, including but not limited to the Product type and contact name and phone number. The TRIBE agrees that SCS may abstract and report to third parties statistical information which does not identify the TRIBE. The TRIBE further consents to the disclosure of information about the TRIBE and the TRIBE'S PRODUCT included in the executive summary to the full evaluation report by SCS and to the public distribution of that executive summary, *subject to prior review by the Tribe.* The TRIBE also consents to the public disclosure and distribution by SCS of its list of SCS certified companies.

In the event any state or federal agency or other party seeks to compel the disclosure by SCS of any confidential information relating to the TRIBE or the TRIBE'S product, SCS shall exercise its best efforts to *promptly* notify the TRIBE so that the TRIBE can take whatever action the TRIBE deems appropriate.

*SCS understands and agrees that Tribal confidential information may include, but is not limited to, information regarding the Tribe's natural resources management, the forest management plan, federally-listed species, specific habitat or ecosystem conditions on the TRIBE's Reservation, water quality and quantity, commercial and financial activities (including financial information about the TRIBE's PRODUCT), cultural and religious practices, and location and nature of sites of cultural or religious significance. SCS understands that various federal and Tribal laws may*



*provide protection to confidential Tribal information, including, but not limited to, the Archaeological Resources Protection Act, the Antiquities Act, and the American Indian Religious Freedom Act.*

B. Confidential Information of SCS

SCS possesses and will develop and acquire confidential and proprietary information and trade secrets including methods, techniques, specifications, marketing, programs, and Standards and procedures in the development and operation of the Certification Program (the "SCS Confidential Information"). SCS will disclose such parts of the SCS Confidential Information to the TRIBE as is required for the participation by the TRIBE in the Certification Program. The TRIBE shall not acquire any interest in the SCS Confidential Information other than the right to utilize it in connection with the Certification Program. The TRIBE shall not use the SCS Confidential Information in any business or capacity during or after the term of this Agreement that would compete with or damage in any way SCS or its clients, and shall not disclose it to any third party except with the consent of SCS or as required by law. In the event any state or federal agency or other party seeks to compel the disclosure by the TRIBE of SCS Confidential Information of SCS, the TRIBE shall exercise its best efforts to notify SCS so that SCS can take whatever action SCS deems appropriate.

9. MISCELLANEOUS PROVISIONS

A. Uncontrollable Breaches

Except as otherwise expressly provided in this Subparagraph, neither SCS nor the TRIBE shall be liable for loss or damage or deemed to be in breach of this Agreement if the failure to perform their respective obligations results from: (1) compliance with any *applicable* law, ruling, order, regulation, requirement, or instruction of any federal, state, or municipal government or any department or agency thereof; (2) acts of God; or (3) any

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similar unforeseeable and unpreventable events. Any delay resulting from any of said causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that said causes shall not excuse payment of amounts owned at the time of such occurrence. If any "uncontrollable breach" described in this Paragraph results in any of the TRIBE'S products becoming out of compliance with SCS certification standards, the TRIBE shall promptly (1) cease using the SCS certification marks on the non-complying product(s), and (2) notify SCS. Failure to comply with these requirements shall be regarded as a breach of the covenants of Paragraph 6.D.

### **B. Enforcement, Jurisdiction, and Governing Law**

Except as otherwise expressly provided in this Agreement, all controversies or claims arising between the TRIBE and SCS as a result of this Agreement or the relationship between the parties which are not resolved within fifteen (15) days after either party notifies the other in writing of the controversy or claim shall be submitted to *non-binding mediation* on demand of either party. *The mediation proceedings shall be conducted in Whiteriver, Arizona, or as otherwise mutually agreed. The mediator shall be selected by mutual agreement of the parties.*

The performance of this Agreement shall take place within the exterior boundaries of the Fort Apache Indian Reservation. Nothing in this contract shall be construed as a waiver of the sovereign immunity of the White Mountain Apache Tribe, its enterprises, departments, employees or agents. SCS and the TRIBE agree that interpretation of rights and duties described herein are to be governed exclusively by applicable Tribal and Federal laws and that all grievances and actions brought hereunder that are not resolved through mediation may be brought only in the courts of the White Mountain Apache Tribe or in federal court in the District of Arizona.

### **C. Limitation of Claims**

Any and all claims by the TRIBE against SCS arising out of this Agreement or the relationship between the TRIBE and SCS shall be barred unless *brought* within 1 year from either the actual discovery of the facts giving rise to such claims or from the date on which TRIBE should have, in the exercise of reasonable diligence, discovered the facts, the TRIBE notifies SCS concerning the claim. The TRIBE'S recovery as a result

of any claims asserted against SCS by the TRIBE under this Agreement shall be limited to the dollar amount of out-of-pocket expenses and damages actually incurred as a result of such breach.

Any and all claims by SCS against the TRIBE arising out of this Agreement or the relationship between SCS and the TRIBE shall be barred unless *brought* within 1 year from either the actual discovery of the facts giving rise to such claims or from the date on which SCS should have, in the exercise of reasonable diligence, discovered the facts, SCS notifies the TRIBE concerning the claim. SCS'S recovery as a result of any claims asserted against the TRIBE by SCS under this Agreement shall be limited to the dollar amount of out-of-pocket expenses and damages actually incurred as a result of such breach.

#### D. Indemnification/Hold Harmless

The TRIBE agrees to indemnify, defend and hold SCS, its affiliates, shareholders, directors, officers, employees, agents, successors, and assigns, harmless against and to reimburse SCS for all obligations and damages *to the extent that such obligations and damages are determined to be caused by the* breach by the TRIBE of this Agreement or *by* the negligent acts or omissions or the willful misconduct of the TRIBE or its agents or employees in connection with this Agreement and which are not caused by any breach of this Agreement, negligence or willful misconduct of SCS or its agents or employees.

SCS agrees to indemnify, defend and hold the TRIBE, its affiliates, employees, agents, successors and assigns, harmless against and to reimburse the TRIBE for all obligations and damages *to the extent that such obligations and damages are determined to be caused by* the breach by SCS of this Agreement or by the negligent acts or omissions or the willful misconduct of SCS or its agents or employees in connection with this Agreement and which are not caused by any breach of this Agreement, negligence or willful misconduct of the TRIBE or its agents or employees.

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The TRIBE agrees to hold SCS harmless against damages, expenses, costs and reasonable attorneys' fees that are determined to be caused by failure of the TRIBE to comply with SCS's marketing guidelines, or from marketing claims, which may intentionally or unintentionally misrepresent, misinform, or misconstrue the Certification Program. Whether or not the Tribe has failed to comply with SCS' Marketing guidelines will be determined through non-binding mediation, as described in Section 9B.

E. Entire Agreement

This Agreement constitutes the entire agreement between the TRIBE and SCS with respect to the subject matter hereof and all prior negotiations, agreements and understandings are merged herein and superseded hereby. The TRIBE and SCS agree that there are no other oral or written understandings or agreements concerning the subject matter of this Agreement. Any revisions or modifications made to this Agreement must be agreed to, and made in writing by, the TRIBE and SCS.

10. NOTICES AND PAYMENTS

All written notices and reports permitted or required under this Agreement will be deemed so delivered at the time of delivery by hand; one (1) business day after sending by telegraph, telex, mailgram, or comparable electronic system; eight (8) business days after being placed in the U.S. mail, postage prepaid and addressed to the party to be notified at its most current principle business address of which the notifying party has been notified. The TRIBE shall designate an authorized agent to assume compliance with all of the terms and conditions of this Agreement and all work orders on behalf of the TRIBE. Any required payment or report not actually received by SCS during regular business hours on the date due (or postmarked by postal authorities at least two (2) days before it is due) will be delinquent.

WHITE MOUNTAIN APACHE TRIBE:

SCIENTIFIC CERTIFICATION  
SYSTEMS, INC.

BY:

BY:

TITLE:  
Authorized Representative

DATE:

TITLE:  
Authorized Representative

DATE:

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