



Ministry of
Forests, Lands and
Natural Resource Operations



Forest Seedling Production Contract

FOREST SEEDLING PRODUCTION CONTRACT

Contract: _____

THIS AGREEMENT is made the ____ day of _____,

BETWEEN: HER MAJESTY THE QUEEN in right of the Province of British Columbia represented by the Director of B.C. Timber Sales, Ministry of Forests, Lands and Natural Resource Operations (the "Ministry"), Victoria, British Columbia (the "Director")

AND:

(the "Contractor")

As the Contractor has agreed with the Director to culture, maintain and grow forest tree seedlings from the seed owned by the Ministry of Forests, Lands and Natural Resource Operations in accordance with this Agreement, and the Contractor has represented that it possesses the necessary skill and facilities to grow those seedlings from the appropriate seed, and the Director has relied on those representations, in consideration of the mutual exchange of promises by the parties, including that for payments to be made by the Director to the Contractor, the parties agree as follows:

DEFINITIONS

1. In this Agreement:
 - (a) "Delivery" means removal of Seedlings from the nursery property;
 - (b) "Fall Plant Seedlings" mean Seedlings which will be delivered between September 1st and November 30th;
 - (c) "First Crop Year" means the calendar year in which the Sowing Date occurs;
 - (d) "Ministry Officer" means the person designated by the Director for the purpose of administering this Agreement;
 - (e) "Number of Seedlings" means the number of trees requested as specified in Schedule A;
 - (f) "Period of Delivery" means the "Period of Delivery" specified in Schedule A;
 - (g) "Price per Seedling" means the "Unit Price" specified in Schedule A;
 - (h) "Propagules" means vegetative materials used to propagate new Seedlings;
 - (i) "Second Crop Year" means the calendar year following the First Crop Year;
 - (j) "Seed" means forest tree Seed;
 - (k) "Seedlings" means forest tree Seedlings;
 - (l) "Seedling Inventory" is an estimate of Seedlings meeting Specifications which will be delivered;
 - (m) "Seedling Request Key" or "Seedling Request" means a unique identifier of a Seedling order;
 - (n) "Seedlot" means a unique identifier of a pool of genetic material;
 - (o) "Sowing" means sowing Seed to produce Seedlings;
 - (p) "Sowing Date" or "Latest Sowing Date" means the latest date specified in Schedule A by which the Seed must be sown;
 - (q) "Specifications" means the stock Specifications to which Seedlings must be grown as specified in Schedule A;
 - (r) "Spring/Winter Plant Seedlings" means Seedlings which will be delivered between December 1 and May 31;
 - (s) "Stock type" means the designation of type of crop and container size in which the Seed will be sown"
 - (t) "Summer Plant Seedlings" mean Seedlings which will be delivered between June 1 and August 31

TERM OF CONTRACT

2. The Term of this Agreement shall commence on the date written above and expires on the latter of the following dates (the "Term"):
 - a. the date that the Ministry takes Delivery of and accepts the contracted Seedlings;
or
 - b. the date that all obligations are fulfilled by the Contractor to the satisfaction of the Director.

DESCRIPTION OF WORK

3. The Contractor shall complete the Agreement in accordance with the quantities, species, Stock types and age classes specified in the Schedule A and deliver the required number of Seedlings to the Director in accordance with the Period of Delivery and the provisions of this Agreement.

LOCATION OF WORK

4. The Contractor's obligations under this Agreement shall be carried out at the nursery commonly known as _____.

SPECIES AND STOCK TYPE AND CONTRACT VOLUME

5. Contract amendments in respect of Seedlot, Seedling Request Key, species, Stock type and volume, or any one or more of those specifications are subject to section 27 of this contract.

SCHEDULES

- 6(1) The Director shall deliver to the Contractor a Schedule A, substantially in the form attached to this Agreement as Schedule A, specifying the following information by species, Stock type and age class:
 - (a) the number of trees requested;
 - (b) the season of planting;
 - (c) the Latest Sowing Date;
 - (d) the Stock type ;

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- (e) the Seedling Stock Specifications;
 - (f) the unit price per Seedling; and
 - (g) notwithstanding section 27, such other general specifications (ie. morphological grading criteria, remedial pest management treatments, etc.), terms and conditions as may be determined by the Director.
- (2) Schedules A, B and C form part of this Agreement as if set out at length in the body of this Agreement.

GROWING, PACKAGING, AND DELIVERY

7. The Director shall supply the necessary Seed of the Seedlot specified in the Seedling Request to produce the number of Seedlings specified in Schedule A and
- (a) Seed and Propagules provided for the production of Seedlings shall only be used for their stated purpose.
 - (b) Except as expressly provided in this Agreement, Seed, Seedlings and all derivatives referred to in this Agreement are and shall remain the property of the Ministry.
8. The Contractor at its own expense shall:
- (a) complete the Sowing not later than the Sowing Dates noted in Schedule A;
 - (b) provide all necessary materials for and carry out all aspects of the culture, maintenance and growing the Seedlings;
 - (c) lift and package the Seedlings in packaging materials as specified by the Director, with equipment and in a manner specified by the Director, as suitable for maintaining the Specifications;
 - (d) mark shipping containers with the species, Stock type, age class, Seedlot, Seedling Request Key number, number of Seedlings in the shipping container, and pesticide use notification specified in Schedule B;
 - (e) maintain the lifted and packaged Seedlings in a dry, cool environment acceptable to the Director until such time as the Director takes Delivery of them; and
 - (f) provide the Director with those services necessary to fulfil the Contractor's obligations under this Agreement.

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9. The Contractor shall, by the Period of Delivery, deliver to the Director, Seedlings that:
- (a) match the quantities, species, Stock types and age classes specified in Schedule A;
 - (b) are free of all diseases, pests, chlorosis, contaminants and mechanical damage;
 - (c) are in a morphological and physiological condition which is acceptable to the Director;
 - (d) are of a size which is not less than the minimum, or greater than the maximum, specified in Schedule A; and
 - (e) are treated only with pesticides approved for use on Seedlings in British Columbia as specified in Schedule B.
10. The Contractor shall deliver the Seedlings meeting the Specifications, f.o.b. the nursery gate. The Ministry shall incur all shipping costs from the nursery gate.
11. Risk
- (1) The Contractor shall be responsible for damage to Seed or Propagules and Seedlings until the Director takes Delivery of them.
 - (2) The Contractor is responsible, until Delivery, to maintain the quality and the viability of Seed or Propagules and Seedlings (including packaged Seedlings)
 - (3) If, at any time prior to Delivery under section 10, pests, disease or contaminants which, in the sole discretion of the Director, pose a threat to the integrity, viability or utility of the Seedlings or accompanying planting medium are reported or are legally required to be reported to the Director or Agriculture Canada, or if Agriculture Canada makes an order with respect to the transportation or disposition of the Seedlings, the Contractor will comply with the terms of the Director or Agriculture Canada's directions or orders concerning treatment, transportation or disposition of the Seedlings and any costs associated with such compliance shall be borne solely by the Contractor without right of compensation from the Director.
 - (4) Where, following Delivery, it is discovered that the Seedlings were damaged or their utility impaired in any manner, including through mispackaging, the Director may exercise any or all powers to reject the Seedlings or to adjust the price paid, that he possessed prior to such Delivery.

REPORTING

12. The Contractor shall, upon request, submit to the Director:
- (a) Seedling samples, labelled and identified as required by the Director, of up to one- percent of the quantities specified in Schedule A; and
 - (b) reports, electronic files or both setting forth details and information required by the Director regarding the quality and the quantities of the Seedlings.
13. At the Period of Delivery, the Contractor shall provide the Director with a complete and itemized record of pesticide applications, including chemicals, rates and dates of application.
- 14(1) The Contractor shall complete and submit to the Director, Seedling Inventories acceptable to the Ministry Officer on:
- (a) May 31 of the First Crop Year for Summer Plant Seedlings;
 - (b) July 31 of the First Crop Year for Fall Plant Seedlings;
 - (c) September 30 of the First Crop Year for Spring/Winter Plant Seedlings; or
 - (d) October 31 of the First Crop Year for Spring/Winter Plant Seedlings, for Coast Forest Region requests;
 - (e) May 31 of the Second Crop Year for Summer Plant Seedlings;
 - (f) July 31 of the Second Crop Year for Fall Plant Seedlings;
 - (g) September 30 of the Second Crop Year for Spring/Winter Plant Seedlings;
 - (h) and October 31 of the Second Crop Year for Spring/Winter Plant Seedlings, for Coast Forest Region requests.
- (2) The Contractor shall conduct the Seedling Inventories during the 15 days immediately preceding the dates specified in section 14(1).
- (3) The Contractor shall submit Seedling Inventories to an accuracy of +/- 5%.
15. With each shipment of Seedlings, the Contractor shall provide the Director, in a format specified by the Director, invoices showing Number of Seedlings by Seedling Request Key, Seedlot, species, Stock type, container type, age class and request agency.

The Contractor shall provide the Director, in a form set out in the “Seedling Delivery Inspections Standard Operating Procedures” published from time to time by the Director, diagrams, samples and records, by Seedlot, species, Stock type and age class, as directed by the Ministry Officer.

ADMINISTRATION

16. The Contractor shall perform its obligations under this Agreement to the satisfaction of the Ministry Officer.
17. The Ministry Officer shall be given reasonable access to the premises of the Contractor to carry out inspections, including verification of Sowing, Seedling Inventories, and Seedling acceptance audits at the time of lifting and packaging of the Seedlings.

STORAGE AND TRANSPORTATION

18. The Contractor shall not lift, package, store or transport any of the Seedlings until the Contractor has received authorization from the Ministry Officer.
19. The Director shall:
 - (a) place lifting and packaging orders with the Contractor not less than 5 days prior to Delivery of Seedlings except in exceptional circumstances; and
 - (b) arrange for all Seedling transportation unless other arrangements have been agreed to by the Contractor and the Director.

PAYMENT FOR SERVICES

- 20(1) In accordance with the provisions of this section, the Director shall pay to the Contractor the Price per Seedling for each Seedling delivered to the Director during the Period of Delivery that meets the Specifications to the amount in Schedule A.
- (2) Upon receipt of written accounts submitted by the Contractor in accordance with the provisions of section 20(3), the Director shall make payments to the Contractor, in accordance with the provisions of section 20(3), as an advance against the contracted price due to the Contractor upon Delivery of Seedlings meeting the Specifications during the Period of Delivery.

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- (3) The Contractor shall submit the following written accounts to the Director who, upon being satisfied of the accuracy of the accounts, shall pay the Contractor as follows:
- (a) One year old Seedlings
 - (i) upon completion of Sowing satisfactory to the Ministry Officer, in an amount equal to the product of the number of Seedlings sown and 35% of the Price per Seedling;
 - (ii) upon completion of the May 31 Seedling Inventory for Summer Plant Seedlings;
 - or upon completion of the July 31 Seedling Inventory for Fall Plant Seedlings
 - or upon completion of the September 30, or October 31 for Coast Forest Region requests, Seedling Inventory for Spring/Winter Plant Seedlings,

in an amount equal to the product of the number of Seedlings which the Inventory indicates will meet the Specifications during the Period of Delivery up to but not greater than the requested volume and 25% of the Price per Seedling;

 - (b) Two year old Seedlings:
 - (i) upon completion of Sowing satisfactory to the Ministry Officer, in an amount equal to the product of the number of Seedlings sown and 35% of the Price per Seedling;
 - (ii) upon completion of the September 30 Seedling Inventory in the First Crop Year, or October 31 for Coast Forest Region requests, in an amount equal to the product of the number of Seedlings which the Inventory indicates will meet the Specifications during the Period of Delivery up to but not greater than the requested volume and 20% of the Price per Seedling;
 - (iii) upon completion of the final Seedling Inventory in the Second Crop Year, in an amount equal to the product of the number of Seedlings which the Inventory indicates will meet the Specifications during the Period of Delivery up to but not greater than the requested volume; and 15% of the Price per Seedling;

(4) Subject to section 20(5) and upon receipt by the Director of:

- (a) a written statement from the Contractor specifying the number of Seedlings delivered that meet the Specifications; and
- (b) an audit report by the Ministry officer;

the Director shall make a final payment to the Contractor for the Seedlings delivered in an amount equal to the product of the Price per Seedling and the number of Seedlings delivered less any advance payments made to the Contractor under section 20(3) plus penalties resulting from audit.

(5) Notwithstanding any other terms of this Agreement, if at any time the total of the payments per Seedling Request Key made to the Contractor under sections 20(3) and (4) exceed the product of the Price per Seedling and

- (a) the number of Seedlings which the seedling inventories indicate will meet the Specifications by the Time of Delivery; or
- (b) the number of Seedlings delivered minus the rejected Seedlings resulting from audit and Seedlings pursuant to section 11(4);

the Contractor shall immediately reimburse the Director the amount of the excess payment on final Delivery invoice.

(6) All invoices for payment must be identified with the Ministry contract number; each invoice will refer to a single contract and be in a format acceptable to the Ministry Officer.

21. The Director is under no obligation to pay the Contractor for the services provided by it under the terms of this Agreement in respect of Seedlings which do not meet the Specifications during the Period of Delivery or for Seedlings which have been lifted, packaged, stored or transported without prior authorization as stated in section 18.

22(1) The Director may, in his or her sole discretion, pay the Contractor for services provided by it under the terms of this Agreement in respect of Seedlings not meeting the Specifications during the Period of Delivery if:

- (a) the Seedlings meet the Specifications through continued growth, culture and maintenance by the Contractor at its expense;
- (b) the Seedling height exceeds the maximum specified in Schedule 'A' and the root collar diameter is greater than the target root collar diameter specified in Schedule 'A' and a new maximum height has been set; or

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- (c) the Seedlings are separated into different size classes through resorting at the Contractor's expense; or
 - (d) the Seedlings may be accepted at modified Specifications to a lower standard set by the Director provided the nursery provides statistically valid documentation on the proportion of the Seedlings delivered that are less than the original contract specification and greater or equal to the modified specification; or
 - (e) the Seedlings are accepted by the Director as transplant stock.
- (2) If the Director takes Delivery of any of the Seedlings described in sections 22(1)(b)(c) or (d), the Director shall pay to the Contractor the Price per Seedling in respect of each Seedling delivered equal to:
- (a) the Price per Seedling multiplied by the lesser of:
 - (i) the modified minimum height specified by the Director divided by the minimum height specified in Schedule A; and
 - (ii) the modified minimum root collar diameter specified by the Director divided by the minimum root collar diameter specified in Schedule A;
- for Seedlings identified in section 22(1) (c) and (d) that are below the standards specified in the Schedule A and greater than or equal to the modified specifications; or
- (b) the Price per Seedling, for Seedlings above the standards specified in the Schedule A, but not greater than the modified maximum height and/or the modified root collar diameter specified by the Director,
- (3) If the Director takes Delivery of any of the Seedlings described in section 22(1)(e), the Director shall pay to the Contractor a fee for service in respect of each Seedling delivered in an amount agreed to by the parties .
- (4) If by September 1 for Summer Plant Seedlings; November 1 for Fall Plant Seedlings or March 1 for Spring/Winter Plant Seedlings, the Director chooses not to pay for services provided in respect of the Seedlings referred to in section 22(1), upon notification by the Director, the title to and property in those Seedlings shall vest in the Contractor and the Contractor may dispose of the Seedlings in its sole discretion.

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- (5) If the Director is unable to take Delivery of Seedlings meeting the quantities, species, Stock types, age classes, and Specifications specified in the Schedule A during the Period of Delivery, the Director shall pay to the Contractor a fee per Seedling equal to 5% of the Price per Seedling for each month, or part thereof, for the time period between the Period of Delivery and the time the Contractor receives authorization to lift as stated in section 18.
- 23(1) The Director is under no obligation to pay the Contractor for the services provided by it under the terms of this Agreement in respect of Seedlings in excess of the Number of Seedlings. If the Contractor delivers the quantities of Seedlings by species, Stock type and age class as specified in Schedule A and has excess Seedlings of that species, Stock type and age class meeting the Specifications during the Period of Delivery, the Contractor shall at the time of Delivery notify the Director of the excess and the Director may, in his sole discretion, within the period of time after the acceptance of Delivery specified in Schedule C, notify the Contractor of acceptance of the excess Seedlings and pay in accordance with section 20(4).
- (2) If the Director does not, within the period of time after the acceptance of delivery specified in the Schedule C, agree to pay a fee for services provided by the Contractor in respect of the Seedlings referred to in section 23(1), upon notification by the Director, the title to and property in those Seedlings shall vest in the Contractor and the Contractor may dispose of the Seedlings in its sole discretion.

MISCELLANEOUS

24. If the Director, in his sole discretion which shall be exercised reasonably, determines that the Contractor has failed to meet the requirements of this Agreement, he may in writing notify the Contractor of the default and require it to correct the breach within a reasonable time, as determined by the Director in his sole discretion which shall be exercised reasonably having regard to the particular default alleged. If the Contractor fails to correct the breach within the time so fixed, the Director may terminate this Agreement on written notice to the Contractor, and therefore, the only obligation of the Director to the Contractor shall be to pay for Seedlings which meet the Specifications that are delivered before the notice of termination.
25. Subject to Section 11(3), neither party shall be responsible for loss or damage caused by its delay or failure to perform its obligations under this Agreement when the delay or failure is due to strikes, floods, acts of God or the Queen's enemies, lawful acts of public authorities or delays or defaults caused by common carriers, which cannot be reasonably foreseen or provided against.

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26. This Agreement shall be construed in accordance with the laws of the Province of British Columbia.
 27. The Term of this Agreement and the Schedules attached to it may be amended by the written agreement of the parties.
 28. This Agreement shall not be assigned, subcontracted or transferred in whole or in part without the written consent of the Director, except that nothing herein will operate to prohibit the Contractor from pledging moneys due or accruing due under this Agreement as security for borrowings pursuant to a general assignment of book accounts, or assignment of a specific debt or otherwise.
 29. Notwithstanding any other provision of this Agreement the payments of money by the Director to the Contractor pursuant to this Agreement are subject to:
 - (a) there being sufficient moneys available in an appropriation, as defined in the *Financial Administration Act*, R.S.B.C. 1996, c.138 , to enable the Province, in any fiscal year or part thereof when any payment of money by the Director to the Contractor falls due pursuant to this Agreement, to make that payment; and
 - (b) Treasury Board, as defined in the Act, not having controlled or limited, pursuant to the *Financial Administration Act*, expenditure under any appropriation referred to in paragraph (a).
 30. If any provision of this Agreement or the application of it to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of it to any other person or circumstance will not be affected or impaired thereby and will be valid and enforceable to the extent permitted by law.
 31. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and there are no representations or warranties, express or implied, statutory or otherwise and no agreements collateral to this Agreement other than as expressly set forth or referred to in this Agreement.
 32. Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better or more perfect and absolute performance of the terms and conditions of this Agreement.

The Parties have executed this Agreement as follows:

SIGNED AND DELIVERED on behalf of the Province by an authorized representative of the Province	SIGNED AND DELIVERED by or on behalf of the Contractor (or by an authorized signatory of the Contractor if a corporation)
(Authorized Ministry Expense Authority)	(Contractor or Authorized Signatory)
(PRINTED NAME of Ministry Expense Authority)	(PRINTED NAME of Contractor)
Dated this ____ day of _____, 20____	Dated this ____ day of _____, 20____