

WAGANAKISING ODAWAK STATUTE 2014-011
CONTRACTS

SECTION I. SHORT TITLE

This Statute may be cited as the “Contracts Statute.”

SECTION II. PURPOSE

The purposes of this Statute are to establish a cause of action for Contracts, and to set forth the Contractual rights and duties of parties, and to provide for the enforcement of Contracts within the Tribe’s jurisdiction.

SECTION III. DEFINITIONS

- A. **“Acceptance”** means a communication made by an Offeree to an Offeror agreeing to the content of the Offer that manifests intent to enter into a Contract.

- B. **“Assignor”** means one who makes an assignment.


- C. **“Consideration”** means some form of legal benefit or detriment that reflects a bargained-for exchange between the parties to a Contract.

- D. **“Contract”** means a promise or set of promises, the performance or breach of which gives rise to a legally recognized duty.

- E. **“Court”** means the courts of the Little Traverse Bay Bands of Odawa Indians.


- F. **“Delegate”** means one who represents or acts for another.

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- G. **“Delegator”** means one who delegates to another.
- H. **“Divisible Contract”** means a Contract where the performance of each party is divided into two or more parts.
- I. **“Merchant”** means a person who regularly deals in goods of the kind.
- J. **“Minor”** means a person under the age of 18 years.
- K. **“Obligor”** means a person or entity who owes an obligation to another.
- L. **“Offer”** means a communication made by an Offeror to an Offeree that demonstrates the intent to enter into a Contract.
- M. **“Offeree”** means a person or entity to which an Offer is made.
- N. **“Offeror”** means a person or entity that makes an Offer.
- O. **“Promisee”** means a person or entity to which a promise is made.
- P. **“Promisor”** means a person or entity that makes a promise.
- Q. **“Signature”** means some symbol, mark or other writing, whether by hand or by electronic means, intended by the signor to serve as acknowledgement of his or her acceptance or approval.
- R. **“Tender”** means the present willingness and ability to perform.
- S. **“Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians”** means “areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat. 621.” Little Traverse Bay

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Bands Constitution, Article V(A)(1)(a).

- T. **“Tribal Citizen”** means an enrolled member of the Little Traverse Bay Bands of Odawa Indians.
- U. **“Tribal Court”** means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
- V. **“Tribe”** means the Little Traverse Bay Bands of Odawa Indians.
- W. **“Writing”** means any document that identifies the material terms of a Contract. A Writing can be in any form, tangible or electronic.

SECTION IV. JURISDICTION

The Tribe’s jurisdiction under this Statute extends to all Contracts where both parties to the Contract are Tribal Citizens, or at least one party to the Contract is the Tribe or a Tribal Citizen and the Contract is entered into, and is intended to be performed, within the Territorial Jurisdiction of the Tribe.


SECTION V. STATUTE OF LIMITATIONS

An action for breach of Contract must be brought within four years of the date that the non-breaching party becomes aware of the breach; otherwise the action is barred, unless a different time limit has been agreed to by the parties as indicated in the Contract.

SECTION VI. CONTRACT FORMATION

- A. **In General.** To form a valid Contract, there must be an Offer, an Acceptance, and valid Consideration given.

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1. **Offer.** An Offer creates a power of Acceptance in the Offeree and a corresponding liability on the part of the Offeror.
 - a. For a communication to be an Offer, it must contain a promise, undertaking, or commitment to enter into a Contract that shows the Offeror's intent to Contract.
 - b. The Offer must be definite and certain as to the identity of the Offeree or the class to which Offeree belongs, the subject matter of the Offer, and the price to be paid, unless indicated otherwise.
 2. **Acceptance.** An Acceptance is a manifestation of assent to the terms of the Offer, through which the Offeree exercises the power given by the Offeror to create a Contract.
- B. Bilateral Contract.** A bilateral Contract is formed by a mutual exchange of promises, in which each party is both a Promisor and a Promisee.
- C. Unilateral Contract.** A unilateral Contract is formed only upon the Offeror requesting performance, rather than a promise, and full performance by the Offeree.
- D. Definiteness of Subject Matter.** The subject matter of a Contract must be reasonably certain such that the promise is identifiable.
 1. A Contract involving the sale of real estate must identify the land, the price to be paid, and the parties to the Contract.
 2. A Contract involving the sale of goods must contain the quantity. It is sufficient if a Contract calls for one party to supply all that the party produces or all that the other party requires, so long as the quantity is capable of being determined.
 3. A missing Contract term does not prevent formation of the Contract if it appears under the facts and circumstances that the parties intended to make a Contract,

and there is a reasonably certain basis for giving a remedy. The Court may supply reasonable terms for those that are missing.

- a. If the missing term is price, the Court may use the fair market value or the value currently used in the geographical area and the relevant industry to determine a reasonable price.
- b. For any other missing term in a Contract, the Court should base its determination on the course of dealing between the parties, the course of performance between the parties, or industry practice or standards.

E. Terminating an Offer. The power of Acceptance created by an Offer ends when the Offer is terminated by revocation, rejection, operation of law, or expiration.

1. Revocation. An Offeror may revoke his or her Offer at any time before the Offeree accepts. The revocation may be communicated to the Offeree either directly or indirectly. Indirect communication of the revocation occurs when the Offeree receives correct information from a reliable source of any action of the Offeror that would indicate to a reasonable person that the Offeror no longer wishes to make the Offer.

a. A revocation by the Offeror is effective when it is received by the Offeree. The revocation need not be actually read by the Offeree. It is sufficient if the revocation is received at the Offeree's place of business, home, or otherwise comes to the Offeree's attention.

b. **Exceptions.** An Offeror's power to revoke his or her Offer is limited in the following situations:

i. **Option Contract.** An Offeror may not revoke an Offer if the Offeree has given consideration for a promise by the Offeror not to revoke.

ii. Detrimental Reliance. Where the Offeror could reasonably expect that the Offeree would rely to his or her detriment on the Offer; and the Offeree does so rely, the Offer will be held irrevocable as an option Contract for a reasonable length of time.

iii. Part Performance of Unilateral Contract. An Offer for a unilateral Contract becomes irrevocable once performance has begun. Once the Offeree has begun performance, he or she has a reasonable time to complete performance, during which time the Offer remains irrevocable.

2. Rejection. An Offeree may terminate an Offer by an express rejection or a counteroffer.

- a.** An express rejection is a statement by the Offeree that he or she does not intend to accept the Offer; and such statement will terminate the Offer.
- b.** A counteroffer is an Offer made by the Offeree to the Offeror that contains the same subject matter as the original Offer, but differs in its terms. A counteroffer serves as both a rejection of the original Offer and a new Offer.
- c.** A rejection is effective when it is received by the Offeror.
- d.** If an Offer is rejected, the Offeror may restate the same Offer and create a new power of Acceptance. The Offeror may also make a different offer.

3. Termination by Operation of Law.

- a.** If either of the parties dies, is adjudicated insane or incompetent, or is appointed a guardian prior to Acceptance, the Offer is terminated. It is not necessary that the death, insanity or incompetence be communicated to the other party. However, if the rules limiting an Offeror's power to terminate

are applicable (option Contract, detrimental reliance, or part performance), then death, insanity or incompetence will not terminate the Offer.

- b. If the subject matter of the Contract is destroyed, the Offer is terminated.
- c. If the subject matter or the performance of the Contract becomes illegal, the Offer is terminated.

4. Expiration.

- a. An Offer remains open for the time period specified or, if no time is stated, for a reasonable period of time.

F. Acceptance of an Offer. For an Offer to be accepted, the Offeree must know of the Offer and unequivocally accept the Offer in the manner requested or by other reasonable means.

- 1. An Acceptance is effective at the moment it is received by the Offeror personally or at his or her usual place of business. However, if the Acceptance is by mail or similar means, it is effective at the moment of dispatch so long as the mail is properly addressed and stamped.
- 2. Any additional or different terms in the response will not constitute an Acceptance, and will instead be considered a rejection and a counteroffer.

SECTION VII. DETERMINING THE TERMS OF A CONTRACT

A. General Rules of Interpretation.

- 1. Contracts must be interpreted as a whole. Specific clauses will be subordinated to the Contract's general intent.

2. Words must be interpreted according to their ordinary meaning, unless the words are defined in the Contract or it is clear that they were meant to be used in a technical sense.
3. If provisions within the Contract appear to be inconsistent, written or typed provisions will prevail over handwritten provisions.
4. Ambiguities in a Contract are construed against the party preparing the Contract, absent evidence of any contrary intention of the parties.

B. Parol Evidence.

1. **Parol Evidence Rule.** Where parties have agreed to a written Contract as the final expression of their agreement, a prior written or oral agreement, or a contemporaneous oral agreement, cannot be used to vary the terms of the Contract.
 - a. To determine whether the parties intended the Writing as the final expression of their agreement, the Court must consider all the specific circumstances of the transaction, and consider whether similarly situated parties would normally include the matter sought to be introduced into a written Contract.
 - b. Extrinsic evidence may be admitted where it does not seek to vary, contradict, or otherwise include contrary terms to the written Contract. The following may be admitted as extrinsic evidence:
 - i. Where a party asserts that the agreement, although accurately reflected in the Writing, never came into being because of a formation defect or some similar defect; or

- ii. Where the evidence concerns a collateral matter that is of the type that would naturally be omitted from the written agreement and does not conflict with the terms of the written Contract.

C. Modification of Contract Terms.

1. A final Contract cannot be modified unless the modification is supported by new Consideration.
2. A written Contract may be modified orally. However, if a Contract, as modified, falls within Section XI.C.1 herein concerning the Prevention of Fraud, the Contract and any modification must be in Writing.

SECTION VIII. PERFORMANCE OF A CONTRACT

- A. In General.** A party's basic duty is to substantially perform all that is called for in the Contract.
- B. Discharging Contractual Duties.** A party's duties under a Contract may be discharged under the following circumstances:
1. **Performance.** Full and complete performance under the Contract discharges a party's duties under the Contract.
 2. **Tender.** A good faith Tender of performance made in accordance with contractual terms discharges a party's duties under the Contract.
 3. **Illegality.** If the subject matter or the performance of the Contract becomes illegal, the party's duties under the Contract are discharged.
 4. **Impossibility.** The occurrence of an unanticipated or extraordinary event that makes performance of the Contract impossible may discharge the party's duties if such

duties are objectively impossible to perform.

- a. The impossibility must be objective, meaning that the duties could not be performed by anyone.
 - b. If the performance to be rendered under the Contract becomes only partially impossible, the duty may be discharged only to that extent.
 - c. The death or physical incapacity of a party will not render the Contract impossible, unless the party who is now deceased or incapacitated was a person necessary to effectuate the Contract.
5. **Frustration.** The occurrence of a supervening act or event that frustrates the purpose of the Contract may discharge duties under the Contract. Frustration exists if the purpose of the Contract becomes valueless and the supervening act was not the fault of the party seeking the discharge.
6. **Rescission.** A mutual rescission of the Contract by the parties by express agreement and including Consideration will discharge the duties of each.


 - a. A rescission may be made orally, unless the Contract is within Section XI.C.1 herein concerning the Prevention of Fraud.
 - b. Unilateral rescission may be granted only if the party seeking the rescission has adequate legal grounds, including claims of mistake, misrepresentation, duress, or failure of Consideration.
7. **Novation.** A novation is the substitution of a new Contract for a previous one. The new Agreement extinguishes the rights and obligations that were in effect under the previous Agreement or accomplishes or achieves the substitution of a new party for an original party to the Contract, if the following requirements are met:

- a. A previous valid Contract exists; and
 - b. All the parties are in agreement as to the new Contract.
8. **Partial Modification.** If the parties subsequently modify part of the Contract, the modification serves to discharge those terms of the original Contract that are subject to the modification. However, a modification will not serve to discharge the entire Contract. To receive a partial discharge by modification, the following must be met:
- a. The modifying agreement must have been mutually assented to; and
 - b. There must be Consideration for the modification; however it may be sufficient Consideration that each party limits his or her rights to enforce the original Contract.
9. **Accord and Satisfaction.** An accord is an Agreement where one party to an existing Contract agrees to accept, in lieu of the performance that he or she is entitled to receive from the other party to the existing Contract, some other, different performance. The satisfaction is the performance of the accord agreement, and will discharge the duties under both Contracts.

SECTION IX. TERMINATION OF CONTRACT

- A. **In General.** A Contract may terminate upon the completion of performance by all parties.
- B. **Mutual Agreement.** The parties to a Contract may terminate the Contract between them by mutual agreement for any reason.
- C. **Breach.** A Contract may terminate upon a breach by one of the parties as set out in Section X of this Statute.

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SECTION X. BREACH OF CONTRACT

- A. In General.** A breach occurs when the Promisor is under an absolute duty to perform, the time for performance has passed, and the absolute duty of performance has not been discharged.
- B. Effect of Breach.**
1. The effect of a breach depends on the materiality of the breach. To determine whether a breach is minor or material, the Tribal Court may look to the following factors:
 - a. The extent to which each party will receive substantially the benefit he or she could have anticipated from full performance;
 - b. The extent to which either party may be adequately compensated in damages;
 - c. The extent to which each party has already performed or made preparations to perform;
 - d. The extent to which each party will suffer hardship by termination of the Contract;
 - e. The extent to which either party acted negligently or willfully in his or her failure to perform; and
 - f. The extent to which the parties will perform the remainder of the Contract.
 2. **Minor Breach.** A breach is minor if either party gains the substantial benefit of his or her bargain despite the Obligor's defective performance. Minor breaches

may include, but are not limited to, delays in performance or small deficiencies in the quality or quantity of performance when precision is not critical. The non-breaching party may have a remedy, but the breach will not relieve his or her duty of performance under the Contract.

3. **Material Breach.** A breach is material if either party does not receive the substantial benefit of the bargain as a result of failure to perform or defective performance. The non-breaching party is discharged from his or her duty to perform and has an immediate right to all remedies.
4. **Minor Breach Coupled with Unwillingness to Perform.** When the breach is minor and is coupled with an unwillingness to perform by the breaching party, the non-breaching party may treat this as a material breach. The non-breaching party is discharged from his or her duty to perform and has a right to all remedies.

SECTION XI. DEFENSES

A. Defenses to Formation.


1. **Lack of Mutual Assent.** If both parties entering into the Contract are mistaken about existing facts relating to the agreement, the Contract is voidable. The adversely affected party may void the Contract if:
 - a. The mistake concerns a basic assumption on which the Contract is made;
 - b. The mistake has a material effect on the agreed-upon exchange; and
 - c. The party seeking to void the Contract did not assume the risk of the mistake.
2. **Mistake in Transmission.** Where there is a mistake in the transmission of an Offer or Acceptance by an intermediary, the message as transmitted is operative

unless the other party knew or should have known of the mistake.

3. **Ambiguity.** When a Contract contains language that has at least two possible meanings, the following rules apply:
 - a. **Neither Party Aware.** Where there is an ambiguity in the Contract that neither party was aware of at the time of contracting, there is no Contract unless both parties intended the same meaning.
 - b. **Both Parties Aware.** Where both of the parties were aware of the ambiguity at the time of contracting, there is no Contract unless both parties in fact intended the same meaning.
 - c. **One Party Aware.** Where one party was aware of the ambiguity and the other party was not at the time of Contracting, a Contract will be enforced according to the intention of the party who was unaware of the ambiguity.
4. **Misrepresentation.** Where one party makes a false assertion intended to induce a party to enter into a Contract, the Contract is voidable if the innocent party justifiably relied on the false assertion.
5. **Lack of Consideration.** If the promises exchanged at the formation stage lack the elements of bargain or legal benefit or detriment, the Contract is void.
6. **Illegality.** If either, the Consideration, the subject matter, or the performance of the Contract is illegal under the Constitution or laws of the Little Traverse Bay Bands of Odawa Indians or under applicable federal laws, the Contract is void. However, a party may not benefit from invoking illegality as a defense if that party knew of the illegal nature of the Consideration or subject matter of the Contract.

B. Defenses Based on Lack of Capacity.

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1. **Legal Incapacity to Contract.** If a person is legally incapable of incurring binding contractual obligations, timely assertion of this defense by a Promisor makes the Contract voidable at his or her election.
 - a. **Contracts of Minors.** A Contract entered into between a minor and an adult is voidable by the minor, but is binding on the adult.
 - i. The minor may choose to disaffirm a Contract any time before, or shortly after, reaching the age of 18. If the minor chooses to disaffirm, the minor must return anything received under the Contract that still remains at the time of disaffirmance.
 - ii. A minor may affirm the Contract upon reaching the age of 18 either expressly or by failing to disaffirm the Contract within a reasonable time after reaching the age of 18.
 - iii. **Exception.** A minor is liable for the reasonable value of any necessities furnished to him or her.
 - b. **Mental Incapacity.** A person whose mental capacity is so deficient that he or she is incapable of understanding the nature and significance of a Contract may disaffirm when lucid or by his or her legal representative.
 - i. Such person may affirm the Contract during a lucid interval or upon complete recovery.
 - ii. **Exception.** A mentally incompetent person is liable for the reasonable value of any necessities furnished to him or her.
 - c. **Intoxication.** The defense of intoxication is only available if the person was so intoxicated at the time that he or she entered the Contract that he or she did not understand the nature and significance of the Contract, and the other party knew or had reason to know of the intoxication.

- i. An intoxicated person may affirm the Contract upon recovery.
- ii. **Exception.** An intoxicated person is liable for the reasonable value of any necessities furnished to him or her.

2. **Duress and Undue Influence.** Contracts induced by duress or undue influence are voidable and may be rescinded as long as not affirmed.

a. **Duress.** Duress occurs when:

- i. a party is physically forced to sign a Contract against his or her will; or
- ii. a party's assent to a Contract is induced by an improper threat by the other party that leaves the victim no reasonable alternative.

b. **Undue Influence.** Undue influence is the unfair persuasion of a party who is under the domination of the person exercising the persuasion, or who by virtue of the relationship between them is justified in assuming that the person will not act in a manner inconsistent with his or her welfare.

C. **Defenses to Enforcement.**

1. **Prevention of Fraud.** For the prevention of fraud, certain Contracts must be evidenced by a Writing containing material terms and signed by the parties sought to be bound. If a Contract is required to be in Writing and is not, this fact must be raised as a defense, or it is waived. The following Contracts must be in Writing:

- a. A promise by an executor or administrator to pay the debts of an estate out of his or her own personal funds must be evidenced by a Writing.

- b. Suretyship promises, i.e., a promise to pay the debt of another, must be evidenced by a Writing. The promise must be to pay the debt of another upon default of that other person, and the promise must be made to the creditor.
- c. A promise in consideration of marriage must be evidenced by a Writing. The promise can be to do or refrain from doing something if the parties marry, or it may be a promise to induce marriage by offering something of value.
- d. A promise creating an interest in land must be evidenced by a Writing. Such promises include: the sale of real property; leases for more than one year; easements for more than one year, fixtures, minerals or structures to be severed by the buyer; and mortgages.
- e. A promise that by its terms cannot be performed within one year from the date of the Contract must be evidenced by a Writing. However, the Contract need not be in Writing if it is possible to complete performance under the Contract within one year, regardless of whether performance actually occurs within one year.
- f. A Contract for the sale of goods or the furnishing of services for a price of one thousand dollars (\$1,000.00) or more must be evidenced by a Writing.

2. **Unconscionability.** The Court may refuse to enforce a provision or an entire Contract to avoid unfair terms because of unfair surprise to an individual consumer or unequal bargaining power between an individual consumer and a commercial vendor or Merchant.

- a. Inconspicuous risk-shifting provisions such as the following may be unconscionable: confession of judgment clauses; disclaimer of warranty provisions; and add-on clauses subjecting all of the property purchased by an individual consumer to repossession if a newly-purchased item is not

paid for.

- b. A clause or Contract may be unconscionable and unenforceable if the individual consumer is unable to procure necessary goods from any other seller without agreeing to a similar provision, thus leaving the individual consumer without a choice.
- c. An exculpatory clause releasing a Contracting party from liability for his or her own intentional wrongful acts may be unconscionable.

SECTION XII. REMEDIES


There are two primary types of remedies for Contract breach. Money damages and equitable remedies, unless otherwise indicated by the parties or subject to any express Contract term to the contrary. The purpose of any remedy is to place the injured party in the position they would have been had the Contract been performed. In determining an appropriate remedy, the Court may consider any of the following:

- A. **Specific Performance.** If monetary damages are inadequate, the non-breaching party may seek specific performance. Specific performance is an order by the Tribal Court ordering the breaching party to perform or face contempt charges. Specific performance should be granted only in cases where the subject matter of the Contract is rare or unique such as land, heirlooms or art, or such that monetary damages will not put the non-breaching party in as good a position as performance would have, because there is no available substitute.
- B. **Compensatory Damages.** Compensatory damages should be granted for the purpose of putting the non-breaching party in the position he or she would have been had the Contract been performed.
 - 1. Expectation damages are those that reflect the expected benefit of the Contract. Damages should be sufficient for the non-breaching party to purchase substitute

performance.

2. Reliance damages are appropriate when the non-breaching party's damages are too speculative to measure. The non-breaching party may recover the cost of his or her performance, and reliance damages should restore him or her to the same position as if the Contract had never been formed.
 3. Consequential damages are an appropriate remedy for losses resulting from the breach that a reasonable person would have foreseen would occur from a breach at the time of entry into the Contract.
 4. **Certainty Requirement.** The non-breaching party has the burden of proving to the Tribal Court his or her damages to a reasonable certainty.
- C. **Nominal Damages.** Nominal damages may be awarded where a breach is proven but no actual loss can be demonstrated.
- D. **Liquidated Damages.** Parties to a Contract may stipulate what damages are to be paid in the event of a breach. Such liquidated damages, or a liquidated damages clause, are enforceable by the Tribal Court only if the liquidated damages are in an amount that is reasonable in view of the actual or anticipated harm caused by the breach. To obtain liquidated damages, the non-breaching party must prove:
1. That damages for a contractual breach were difficult to estimate or ascertain at the time the Contract was formed; and
 2. That the amount agreed on as liquidated damages was a reasonable forecast of compensatory damages in the event of breach.
- E. **Contracts for the Sale of Land.** If specific performance is not appropriate or available, the Court may award compensatory damages measured by the difference between the Contract price and the fair market value of the land.

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- F. Restitution.** Restitution is available where one party has conferred a benefit on the other, with the other party's knowledge and assent, and with the expectation of being compensated. The award of restitution should be measured by the benefit conferred, to prevent unjust enrichment of the party receiving the benefit.
- G. Rescission.** The grounds for rescission must have occurred either before or at the time the Contract was entered into. Such grounds include:
1. Mutual mistake of a material fact;
 2. Unilateral mistake if the other party knew or should have known of the mistake;
 3. Unilateral mistake if hardship suffered by the mistaken party is so extreme it outweighs the other party's expectations under the Contract;
 4. Misrepresentation of fact or law by either party as to a material factor in the negotiations when that factor was relied upon; and
 5. any other grounds including duress, undue influence, illegality, lack of capacity or failure of Consideration.
- H. Reformation.** Where the written Contract between the parties contains a clerical error or otherwise fails to reflect the actual intent of the parties, the Tribal Court may reform the Contract so that it accurately reflects the intent of the parties.
- I. Mutual Agreement.** The parties to a Contract are free to negotiate their own remedies before entering into the Contract. Additionally, where there is a breach or termination of the Contract, the parties are free to negotiate appropriate remedies at the time of the breach or termination.
- J. Duty to Mitigate Damages.** A party who is injured as a result of a Contract breach has a duty to act reasonably to minimize the harm caused by the breach and the expense to the breaching party.

SECTION XIII. THIRD PARTIES TO THE CONTRACT

A. Third Party Beneficiaries.

1. Categories of Third Party Beneficiaries.

- a. Intended beneficiaries are third parties that have rights under a Contract although they are not a party to the Contract. A person is an intended beneficiary if he or she is expressly designated in the Contract, performance is to be made directly to that person, or that person otherwise has rights under the Contract.
 - i. Creditor beneficiaries are intended beneficiaries where the Promisee's purpose is to discharge an obligation owed to the creditor beneficiary.
 - ii. Donee beneficiaries are intended beneficiaries where the purpose is to confer a gift on the donee beneficiary.
- b. Incidental beneficiaries are third parties that receive a benefit under a Contract, but have no rights under the Contract.


2. Vesting of Rights. Once the beneficiary's rights have vested, the original parties to the Contract are both bound to perform the Contract. Any efforts by the Promisor or the Promisee to rescind or modify the Contract at that point are void. Intended beneficiaries may enforce a Contract only after their rights have vested.

- a. **Exception.** An intended beneficiary may enforce a Contract prior to his or her rights vesting when the Promisee tells the beneficiary of the Contract and should foresee reliance by the beneficiary, and the beneficiary reasonably relies to his or her detriment.

B. Assignment of Rights under a Contract.

1. In general, all Contractual rights may be assigned. However, an assignment is barred under the following circumstances:
 - a. If the assignment would substantially change the Obligor's duty;
 - b. If the assignment would substantially alter the Obligor's risk;
 - c. If the assignment is prohibited by the laws of the Little Traverse Bay Bands of Odawa Indians or other law; or
 - d. If the Contract contains an express provision that prohibits and makes void all assignments.
2. The effect of an assignment is to establish privity of Contract between the Obligor and the assignee while extinguishing privity between the Obligor and Assignor. The Assignee then replaces the Assignor as the real party in interest, and that person alone is entitled to performance under the Contract.
3. Assignments need not be in Writing unless the assignment is one of the following:
 - a. Assignment of wages;
 - b. Assignments of interests in land; or
 - c. Assignments intended as security interests under Article 9 of the Uniform Commercial Code, as adopted by the Tribe, and any similar law that may amend or replace it.
4. Assignments for value are irrevocable. An assignment for value exists if it is

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- a. Done for Consideration; or
- b. Taken as security for or payment of a preexisting debt.

5. Gratuitous assignments are generally revocable. However, they become irrevocable if the Obligor has already performed or grounds for estoppel exist. Such an assignment may be revoked in the following ways:

- a. Death of the Assignor;
- b. Bankruptcy of the Assignor;
- c. Notice of revocation communicated by the Assignor to either the Assignee or the Obligor;
- d. The Assignor takes performance directly from the Obligor; or
- e. Subsequent assignment of the same right by the Assignor to another person.

6. Rights and Liabilities of the Parties.

- a. The Assignee may enforce his or her rights against the Obligor directly, but may be subject to any defenses that the Obligor had against the Assignor. However, the Obligor may not assert unrelated defenses against the Assignee.
- b. The Assignor impliedly warrants to an assignee for value that:
 - i. The Assignor has the right to make the assignment;

- ii. The right exists and is not subject to limitations or defenses other than those stated or apparent at the time of the assignment; and
- iii. The Assignor will do nothing to defeat or impair the assigned right.

C. Delegation of Duties under a Contract.

1. In general, all Contractual duties may be delegated to a third person. However, duties may not be delegated under the following circumstances:

- a. Where the duties involve personal judgment and skill;
- b. Where a special trust has been reposed;
- c. Where the performance will materially change the expectancy under the Contract; or
- d. Where the Contract restricts either party's rights to delegate duties.

2. No formalities are required to have effective delegations, except that the Delegator must manifest a present intention to make the delegation.

3. Rights and Liabilities of the Parties.

- a. The Obligee must accept performance from the Delegator of all duties that may be delegated.
- b. The Delegator remains liable on the Contract, even where the delegate expressly assumes the duties.
- c. The Delegator is not liable if there is a mere delegation. However, where the delegate assumes the duties of the Delegator and the promise is

supported by Consideration, the delegate may be subject to liability together with the Delegator.

SECTION XIV. TRIBAL SOVEREIGN IMMUNITY

- A. Tribal Immunity From Suit.** The Little Traverse Bay Bands of Odawa Indians, including all subordinate entities, is and shall remain immune from suit except to the extent that the Tribal Council clearly and expressly waives the sovereign immunity of the Tribe including all officials and employees of the Tribe who are acting within the scope of their duties or authority.
- B. Proper Approval.** To be effective any waiver of sovereign immunity, including any limited waiver of sovereign immunity, must be expressly granted by the official action of the LTBB Tribal Council.


SECTION XV. SAVINGS CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this Statute is found by a court of competent jurisdiction to violate the Constitution, laws or ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this Statute, the entirety of the balance of the Statute to remain in full and binding force and effect.

SECTION XVI. EFFECTIVE DATE

This Statute is effective upon signature of the Executive or shall be deemed enacted if not expressly vetoed by the Executive within thirty (30) days of submission. The Tribal Council may, by an affirmative vote of seven (7) members of the Tribal Council, override a veto by the Executive.

Waganakising Odawak Statute Contracts

Secretary Shananaquet 

This Statute shall apply only to contracts entered into after the date of the enactment of this Statute.

CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on September 11, 2014 at which a quorum was present, by a vote of 9 in favor, 0 opposed, 0 abstentions, and 0 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Bill A. Denemy	X			
John W. Keshick III	X			
Beatrice A. Law	X			
Michael J. Naganashe	X			
Aaron Otto	X			
Winnay Wemigwase	X			
Marcella R. Reyes	X			
Julia A. Shananaquet	X			
Regina Gasco Bentley	X			

Date: 9.11.14 Regina Gasco Bentley
 Legislative Leader Gasco Bentley

Date: 9.11.14 Julie Shananaquet
 Secretary Shananaquet

Received by the Executive Office on 9/12/14 by RS

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: 25 Sept 14 Fred Kiogima
 Fred Kiogima, Tribal Chairperson

Waganakising Odawak Statute Contracts
 Secretary Shananaquet RS