Washington State DEPARTMENT OF SOCIAL & HEALTH SERVICES

INDIAN NATION PROGRAM AGREEMENT

Federal Offset Certification for Tribal Child Support and TANF Programs

DSHS Agreement Number: 0962-73213

This Program Agreement is by and between the State of Washington Department of Social and Health Services (DSHS) and the Indian Nation identified below, and is issued in conjunction with an Indian Nation and DSHS Agreement Regarding General Terms and Conditions, which is incorporated by reference.

Administration or Division Agreement Number

Indian Nation Agreement Number

DSHS ADMINISTRATION	DSHS DIVISION	DSHS INDEX NUMBER	CCS CONTRACT CODE
Economic Services Administration	Division of Child Support	1313	3000NC-62

DSHS CONTACT NAME AND TITLE	DSHS CONTACT ADDRESS
Ted Thornton Program Administrator	712 Pear Street SE Olympia, WA 98507-9162

DSHS CONTACT TELEPHONE	DSHS CONTACT FAX	DSHS CONTACT E-MAIL
(360) 664-5028 Ext:	(360) 664-5342	tthornto@dshs.wa.gov

INDIAN NATION NAME	INDIAN NATION ADDRESS
Nooksack Tribe	PO Box 157 Deming, WA 98244-
INDIAN NATION FEDERAL EMPLOYER IDENTIFICATION NUMBER 911487296	INDIAN NATION CONTACT NAME Pat Check

INDIAN NATION CONTACT TELEPHONE	INDIAN NATION CONTACT FAX	INDIAN NATION CONTACT E-MAIL
(360) 592-5176 Ext:	(360) 592-5721	pcheck@nooksack-tribe.org

IS THE INDIAN NATION A SUBRECIPIENT FOR PURPOSES OF THIS PROGRAM AGREEMENT?	CFDA NUMBERS
No	

PROGRAM AGREEMENT START DATE	PROGRAM AGREEMENT END DATE	MAXIMUM PROGRAM AGREEMENT AMOUNT
10/1/2009	9/30/2012	No Payment

EXHIBITS. When the box below is marked with a check (4) or an X, the following Exhibits are attached and are incorporated into this Indian Nation Program Agreement by reference:

☒ **Data Security: 6002GD: No Data Security Exhibit**

☒ **Exhibits (specify): Exhibit A - IRS Confidentiality & Security Training Slides**

☐ **No Exhibits.**

By their signatures below, the parties agree to the terms and conditions of this Indian Nation Program Agreement and all documents incorporated by reference. No other understandings or representations, oral or otherwise, regarding the subject matter of this Program Agreement shall be deemed to exist or bind the parties. The parties signing below certify that they are authorized, as representatives of their respective governments, to sign this Program Agreement.

INDIAN NATION SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED
	Narz Cunanan, Nooksack Tribal Chairman	9/23/09
DSHS SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED
	Kathleen Jenkins, Program Aminstrator DSHS/ESA/Division of Child Support	9/28/2009

1. Government to Government Relations

a. The Indian Nation named above and the State of Washington are sovereign governments. The Indian Nation and DSHS agree to these Special General Terms and Conditions for the purpose of furthering the government-to-government relationship acknowledged in the Centennial Accord and to achieve their mutual objectives of providing efficient and beneficial services to the public.

b. Nothing in this Agreement shall be construed as a waiver of tribal sovereign immunity.

2. Definitions

a. "Agreement" means this Indian Nation Data Share Agreement, including all documents attached or incorporated by reference.

b. "Centennial Accord" means the agreement entered into between federally recognized tribes in Washington State and the State of Washington on August 4, 1989.

c. "CP" means the Custodial Parent.

d. "CFR" means the Code of Federal Regulations.

e. "DCS" means the Division of Child Support of the Economic Services Administration.

f. "DSHS" means the Department of Social and Health Services of the State of Washington and its administrations, divisions, programs, employees, and authorized agents.

g. "FTI" means Federal Tax return and return Information.

h. "IRC" means Internal Revenue Code.

i. "IRS" means Internal Revenue Service.

j. "IRS Publication 1075" is an IRS publication entitled "Tax Information Security Guidelines for Federal, State, and Local Agencies – Safeguards for Protecting Federal Tax Returns and Return Information."

k. "NCP" means the Non-Custodial Parent.

l. "Order State" means the state that issued the child support order.

m. "Personal Information" means information identifiable to any person. This includes but is not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

n. "RCW" means the Revised Code of Washington.

o. "SEMS" means Support Enforcement Management System.

p. "TANF" means Temporary Assistance to Needy Families.

q. "Tribe" means the entity performing services pursuant to this Indian Nation Program Agreement. This includes the Tribe's officers, directors, trustees, employees and/or agents unless otherwise stated in this Indian Nation Program Agreement. For purposes of this Indian Nation Program Agreement, the Tribe is not considered an employee or agent of DSHS.

r. "Tribal IV-A Program" or "Tribal TANF Program" means an Indian Tribe in Washington State that administers a federally-approved TANF program.

s. "Tribal IV-D Program" or "Tribal Child Support Program" means an Indian Tribe in Washington State that administers a federally-approved child support program.

t. "USC" means the United States Code.

u. "WAC" means Washington Administrative Code.

3. Purpose

This Agreement is necessary in order for the DSHS Division of Child Support (DCS) to provide federal offset certification action on cases involving Tribal Child Support or Tribal Temporary Assistance to Needy Families (TANF) programs.

4. Statement of Work

a. CASE REQUIREMENTS

Before sending DCS a referral for federal offset certification, the Tribe must ensure the case meets the federal requirements listed in 45 CFR 303.72 (a), or successor or replacement statute. The requirements are currently as follows:

(1) The debt must be based on an established court or administrative order.

(2) The NCP's name and social security number (SSN) must be correct.

(3) The Tribe must provide a current address for a nonassistance CP.

(4) For a TANF case, the debt must be at least $150 and past due for at least thirty (30) days.

(5) For a nonassistance case, the debt must be at least $500.

(6) Spousal support may be certified providing child support and spousal support are payable under the same order and the minor child is living with the CP.

b. REFERRAL PROCESS FROM A TRIBAL IV-D PROGRAM

(1) The Tribe requests federal offset services by sending a referral to the local DCS field office for each NCP case they want certified. The referral will include, but is not limited to:

(a) Child Support Enforcement Transmittal #1 – Initial Request

(b) Relevant court orders

(c) Debt calculation

(2) The Tribe will indicate on the referral that they are requesting Federal Income Tax Refund Offset Services.

c. PAYMENT OF ADMINISTRATIVE COSTS

(1) The Tribe will receive an invoice of administrative costs from the DCS-Economic Services Administration Fiscal Office. Invoice will occur quarterly. The invoice will be a summation of the previous quarter's administrative costs associated with the Tribe's referred cases.

(2) Within 30 days of the date of the invoice, the Tribe will pay for the administrative costs that the federal government charges each State for federal offset. Subject to any future changes, these federal charges are currently as follows:

(a) $.53 for the pre-offset notice sent to the NCP

(b) $14.65 if federal offset funds are intercepted

(c) $17.00 if administrative offset funds are intercepted

The Tribe shall make checks payable to "DSHS/DCS", reference the "Nooksack / DCS Federal Offset Agreement" on the check and remit payment to:

ESA/OS Fiscal/DCS Accounting Unit
PO Box 45445
Olympia WA 98504-5445

Exception: DCS will not bill the Tribe for these costs if DCS, on its own behalf, also certified for federal offset another debt for the same NCP in the same tax year.

d. DISTRIBUTION OF FEDERAL OFFSET FUNDS

(1) DCS will distribute federal income tax refunds owing to the Tribe within two (2) days of receipt if one of the following is true:

(a) The NCP did not file a joint return.

(b) The NCP filed a joint return, and an injured spouse claim was filed with the original income tax return.

(2) If the NCP filed a joint return on a non-TANF case, but no injured spouse claim was filed with the original income tax return:

(a) DCS will distribute up to 50% of the income tax funds owing to the Tribe within 2 days of receipt.

(b) DCS will distribute the remaining funds within 120 days of receipt, unless an injured spouse claim is filed.

i. If the CP claims that the 120 day delay of the tax refund causes undue hardship, DCS will forward the request to the Tribe. The Tribe decides if and how to grant relief regarding the portion of the funds being held on the Tribe's behalf.

ii. If the Tribe decides it wants to send any funds to the CP before the 120 days, the Tribe must notify the DCS Tribal Liaison in writing of the decision. DCS Headquarters will then send the funds to the Tribe for distribution to the CP.

(c) If DCS distributes funds to the Tribe, and an injured spouse claim is later filed, the Tribe agrees to repay the funds. DCS will work with the Tribe to establish a payment plan for

the repayment of these funds to DCS. (The majority of injured spouse claims are filed within 120 days of DCS receiving the funds; however the NCP's spouse has 6 years to file a claim).

(3) DCS does not automatically hold in suspense any portion of the funds on a TANF case.

(4) The Tribe agrees to repay DCS funds if a portion of the funds distributed to the Tribe must be returned due to:

i. The wrong individual being certified.

ii. Debt inaccuracy. This does **not** apply if DCS caused the debt inaccuracy.

DCS will work with the Tribe to establish a payment plan for the repayment of these funds to DCS.

(5) The Tribe agrees to return to DCS any portion of the funds that result in an overpayment due to NCP payments following certification.

Exception: If the Tribe verifies with DCS that the NCP does not have any other debts certified for federal offset, then the Tribe can refund the payment directly to the NCP.

e. ADMINISTRATIVE REVIEW ON CASES REFERRED BY A TRIBAL IV-D PROGRAM

If the NCP requests an administrative review because the NCP contests certification of a debt to the Internal Revenue Service (IRS):

(1) DCS will send a copy of the administrative review to the Tribe.

(2) If there is **only** tribal interest in the certified funds, the Tribe will perform the informal settlement process and the administrative review process and notify DCS in writing of the decision.

(3) In cases where there is a joint tribal and DCS interest in the certified funds, DCS and the Tribe will work together to provide the administrative review:

(a) DCS will make the final determination on the portion of the debt it certified on its own behalf.

(b) The Tribe makes the final determination on any debt certified on its behalf, and provides DCS with written recommendations instructing DCS if and how to provide relief to the NCP.

Note: The NCP may choose to affirmatively request that the order state or order tribe perform the administrative review if the IV-D Tribe did not issue the order. If the tribe who certified the debt does not have a IV-D program with an established administrative review process, then either DCS or the state or tribe (which issued the order on which certification is based), must perform the review.

(4) If the NCP objects to the administrative review decision, and asks for further review, DCS and the Tribe will follow a similar process as listed in (1) – (3) above.

f. CASE CLOSURE

DCS federal offset cases from IV-D Tribes should be closed each year after the offset has been received and distributed. These cases can be reopened the next year if federal offset is again requested.

The Tribe shall request closure of the case after the Tribe receives the IRS offset funds for the tax year. The Tribe requests closure by completing a Child Support Enforcement Transmittal #2 form and indicating that they are requesting closure.

DCS will not close the case until one of the following occurs:

(1) The Tribe sends DCS a Child Support Enforcement Transmittal #2 form, requesting closure.

(2) The federal offset funds pay off the entire debt.

g. DESCRIPTION OF THE DATA

(1) DCS shall send to the Tribe applicable federal offset funds and provide designated staff of the Tribe with IRS information from SEMS, necessary for the processing and distribution of those funds.

(a) At the request of a Tribal IV-D or IV-A program, DCS shall release the following information:

i. Confirmation that a payment received was the result of a federal offset.

ii. Whether a joint return was filed.

iii. Whether an injured spouse claim has been filed.

(b) For Tribal IV-D programs, DCS shall also release the following information:

i. The total amount of the intercept if a hardship review is requested.

ii. The spouse's name in the case of a joint filing if a refund is necessary due to an overpayment.

iii. The address of all parties on the return if a refund is necessary due to an overpayment.

iv. All documentation pertaining to the request for an administrative review or a hardship review.

(2) The Tribal IV-D program will provide monthly spreadsheets to DCS listing critical debt information for each case certified for federal offset (see h.1.c.).

h. ACCESS TO FEDERAL OFFSET PAYMENTS AND RELATED DATA

(1) METHOD AND FREQUENCY OF ACCESS/TRANSFER

(a) DCS will provide the data listed in g. (see above) by the following methods: mail, secured email, telephone, or fax.

i. If mailed, the data (hard copy) will be sent through the United States Postal Service (USPS) with tracking and delivery confirmation.

ii. If faxed, the receiving fax machine must be located so that it is only accessible by Tribal staff with authorized access to the data. DCS will include a fax cover sheet that notifies the recipient of the sensitivity of the data, and to report the disclosure

and confirm destruction of the fax if it was received by an unintended recipient.

(b) DCS will send applicable federal offset funds to Tribes via electronic funds transfer (EFT).

(c) The Tribal IV-D Program must submit a monthly spreadsheet to the Tribal Liaison in the local DCS field office by the 10th of every month. The spreadsheet is required to ensure that the debt certified for federal offset is accurate. The spreadsheet must include the following information for each case:

i. NCP's name and social security number

ii. CP's name

iii. DCS case number (D#) if known

iv. Balance of the debt as of the last day of the prior month

v. Date and amount of last payment included in the debt balance

(2) PERSONS HAVING ACCESS TO DATA

All SEMS records are confidential and shall only be used for child support requirements of Tribal Child Support and TANF programs.

All information and funds received as a result of federal offset is confidential. The Tribe shall ensure that only designated staff have access to information necessary for the processing and distribution of funds received from federal offset.

i. SECURITY OF DATA, CONFIDENTIALITY, AND NONDISCLOSURE

(1) The Tribe agrees to comply with IRS Publication 1075, which includes very specific criteria for maintaining, using, storing, safeguarding, reporting and destroying FTI. This includes, but is not limited to:

(a) FTI includes a taxpayer's identity and the nature, source, or amount of a payment.

(b) Making sure any notes and all FTI are shredded appropriately and timely (5/16 "on the bias or cross cut shredded).

(c) Not sending FTI in the text of E-mail. Messages containing FTI must be attached and encrypted.

(d) Confirming a NCP's address from IRS information via a second source.

(e) Activating a screensaver password on a PC at all times.

(f) Securing IRS information at all times using two barriers under normal security: secured perimeter/locked container, locked perimeter/secured interior, or locked perimeter/ security container. During duty hours, deny access to areas containing FTI by restricted areas, security rooms, or locked rooms. During non-duty hours, FTI in any form (hard copy, printout, photocopy, notes, backups, etc.) must be protected through a combination of methods: secured or locked perimeter; secured area; or containerization (locked containers, security containers, safes or vaults). FTI must be containerized in areas where other than authorized employees may have access afterhours.

i. Securing keys to IRS cabinet and account for all keys on a master key log.

ii. Maintaining logs that track receipt, use and destruction of IRS reports.

iii. Maintaining up-to-date access list to restrict access to FTI.

iv. Testing IRS locking cabinet periodically to ensure security.

v. Ensuring adequate back-up coverage exists to maintain consistent security.

vi. Preferably not co-mingling data with FTI. If FTI is co-mingled with other data, all co-mingled data will be protected as FTI.

(2) All Tribal staff with access to income tax information and payments must:

(a) Be briefed on security procedures and instructions for protecting federal tax information.

(b) Yearly review the IRS Confidentiality and Security training slides **(See Exhibit)** and sign a DSHS Confidentiality Statement Tribal Employee form.

(3) The Tribe shall take reasonable precautions to secure against unauthorized physical and electronic access to data. This includes protection of the following:

(a) Confidential data will be stored centrally, on secure servers. Servers and backup media will be kept in locked rooms, with access limited to authorized persons. The data will be viewed locally on workstation computers, via network shares, access to which shall be restricted to authorized users through the use of access control lists (ACLs) and authentication with a unique user ID and complex password and/or other, secure authentication mechanism. Passwords will be changed at least every 90 days.

(b) Confidential data stored by the Tribe may not be accessed remotely — no use of external networks (e.g. the Internet) will be allowed.

(c) Confidential data will not be transferred to any portable device or media e.g. laptops, optical discs (CDs/DVDs), flash memory devices (thumb drives), or personal digital assistants (PDA). However, confidential data may be copied to media as part of a secure, central backup process.

(d) Printed working documents will be secured when work stations are unattended.

(e) Access to work areas will limited to authorized staff only.

(4) The Tribe shall track the location of any copies or backups of data provided by DSHS. The method of tracking shall be sufficient to provide the ability to audit the protections afforded the copied data sets.

(5) The Tribe shall notify the DSHS Contact listed on page one of this agreement within one (1) business day, upon discovery of any compromise or potential compromise of confidential or sensitive data shared by DSHS with the Tribe.

(6) The Tribe will promptly destroy the data when the work is completed and/or the need for retention of the records is no longer required. Paper documents may be shredded or pulped, and magnetic or electronic media may be handled as stated below in (7) below.

(7) The Tribe shall remove data received under this Agreement from computer equipment after its been used for its stated purposes by using a "WIPE" utility for purging the Data from electronic

storage media, degaussing the media, or physically destroying the media in such a way that Data cannot be recovered. Media includes, but is not limited to, the following:

(a) Hard drives (workstation and network) – Zero-fill or Wipe utility to destroy data in file space.

(b) Floppy disks – Physical destruction of the media.

(c) Magnetic tapes (reels or cartridges) – Degaussing or cross-cut shredding of the tape

(d) CDs/DVDs – Scour readable (label) side with coarse abrasive or shred.

(e) Zip/JAZZ disks and other removable magnetic media (other than floppy disks) – Media and associated acceptable data destruction methods are: Zero-fill or Wipe utility.

(f) Flash memory and memory cards (Compact Flash, Secure Digital, Memory Stick, etc.) – Zero-fill or Wipe utility.

(8) In the case of hardware failure, the Tribe must protect data by either removing the hard drive before shipping equipment for repair, or a tribal child support employee will be present while equipment is repaired on site.

(9) Data provided by DSHS remains DSHS property. The Tribe will dispose of all copies of any data sets in its possession within 30 days of the date of termination, and certify such destruction to DSHS. DSHS shall be responsible for destroying the returned documents to ensure confidentiality is maintained.

(10) Data provided by the Tribe will be stored and handled by DSHS, but will remain tribal property.

(11) In accordance with 26 USC 6103, 42 USC 654 (26), 45 CFR 309.80, RCW 26.23.120, RCW 74.04.060, and WAC 388-14A-2105 through WAC 388-14A-2160, any information concerning individuals who owe a support obligation or for whom support enforcement services are being provided is private and confidential. The Tribe shall protect information according to applicable state, federal and tribal laws.

(12) The Tribe shall not disclose, transfer, or sell any information as described in this agreement to any party in whole or in part, or to any individual or agency not specifically authorized by this agreement except as provided by law.

j. MONITORING

(1) Annually, the Tribe will ensure that all Tribal staff with access to FTI:

(a) Take the yearly training (reviewed the IRS Confidentiality and Security training slides).

(b) Sign a new DSHS Confidentiality Statement Tribal Employee form.

(2) To ensure FTI safeguarding measures are maintained, the Tribe will:

(a) Perform internal inspections.

(b) Complete an IRS confidentiality and security program report and yearly submit it to the DSHS Contact listed on page 1 of this contract. The Tribe will provide the report on or before the last business day of January of each year. DCS will include a synopsis of the report in the DCS Safeguard Activity Report (SAR).

(3) The Tribe will monitor compliance with requirements of this agreement.

k. LEGAL REFERENCES IN THIS CONTRACT

All references in the contract to IRC, USC, CFR, RCW, or WAC chapters or sections shall include any successor, amended, or replacement code, regulation, or statute.

5. Dispute Resolution

DSHS and the Tribe agree to resolve disputes that arise as follows:

a. DSHS and the Tribe shall attempt to resolve the matter through informal discussions and negotiations.

b. If informal discussions prove unsuccessful, then the parties agree to submit their disputes to a Dispute Board. Each party to this Agreement shall appoint one member to the Dispute Board. The members shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, contract terms, and applicable statutes and regulations and make a determination regarding the dispute.

Either of the parties may request intervention by the Governor at any time. These dispute resolution procedures shall not modify or reduce the Indian Nation's rights to judicial proceedings.

6. Amendments or Termination

a. AMENDMENTS

This contract may be altered or amended by written agreement signed by both parties.

b. TERMINATION

(1) Either party may terminate the agreement by giving the other party at least thirty (30) calendar days written notice.

(2) The Contracts Administrator may terminate the agreement:

(a) For default, in whole or in part, by written notice to the Tribe if DSHS has a reasonable basis to believe that the Indian Nation has breached any provision or condition of the Agreement.

(b) If an external entity (i.e. Internal Revenue Service, federal Office of Child Support Enforcement), determines that a breach has occurred by DSHS or by the Tribe.

(c) The Contracts Administrator shall give the Tribe at least ten (10) business days notice of DSHS' intent to terminate the agreement, along with a summary of the facts supporting such termination (i.e. Monthly Spreadsheet not provided; Administrative Costs are not paid within 30 days of billing; unauthorized use, inspection or disclosure of federal tax return and return information; etc.).

(d) The Tribe shall have at least ten (10) business days to cure the default or longer if agreed by DSHS and the Tribe. In the event of a continuing pattern of default, the Contracts Administrator shall not be required to provide a cure period.

APPROVED AS TO FORM BY THE OFFICE OF THE ATTORNEY GENERAL

Exhibit A
IRS Confidentiality and Security Training Slides

IRS CONFIDENTIALITY AND SECURITY

Annual Employee Awareness Training

1

TAX RETURN INFORMATION

IRS provides certain return information to federal, state and local child support enforcement agencies

2

GENERAL RULE - 6103(a)

Returns and return information shall be confidential, and except as authorized- no employee of the U.S., no employee of any State, any local child support enforcement agency... shall disclose any return information obtained by him in any manner in connection with his service as an employee...

3

DISCLOSURE

The making known of any return or return information in any manner to anyone.

4

IRC §7213
Unauthorized Disclosure

- Willful disclosure of return/return information
- Felony
- Fine not to exceed $5,000 or
- Imprisonment not to exceed five (5) year, or both,
- Cost of prosecution, and
- Dismissal

5

IRC §7213A
Unauthorized Inspection

- Unauthorized Inspection
- Fine not exceeding $1,000, or
- Imprisonment not to exceed 1 year, or both, with
- Cost of prosecution.

6

IRC §7431
Civil Damages

- Civil damages for unauthorized disclosure of return/return information
- The greater of: $1,000 for each act of unauthorized inspection or disclosure or actual damages plus punitive damages plus the cost of the action.

7

SAFEGUARDS

IRC §6103(p)(4): as a condition of receiving return/return information must comply with specific criteria for maintaining, using, storing, reporting and destroying return/return information.

6

IRC §6103(a)

- Returns and return information shall be confidential…no employee… shall disclose any return information obtained by him in any manner*

** This does not apply to tax information received directly from the NCP, CP or their representative.*

9

You May Disclose IRS Payment Type & Amount to:

- **Non Custodial Parent**
- **IV-E Agency (Foster care)**
- **Other IV-D Agencies**
- **IV-D Contractors: Prosecutors and AGs**

10

Staff with IRS Access Must:

- Only access IRS information when necessary to perform their duties
- Shred any note jotted down from IRS report information – this includes addresses without taxpayer identifying information. Even without the taxpayer's identity the information retains it's IRS nature and all the same safeguards necessary for protecting IRS reports must be followed
- Be aware that "B9" payment type on the Case Financial screen is considered IRS information
- Confirm NCP address from IRS report via a second source (i.e., USPS, employer, etc.,) before adding it to the NCP IA screen
- Activate the screensaver password on PC at all times (be sure to reactivate after service performed on PC)

11

IRS CUSTODIAN MUST:

- Secure IRS reports at all times ,
- Secure keys to IRS cabinet and account for all keys on a Master Key Log,
- Maintain logs that track receipt, use and destruction of IRS reports within their office,
- Maintain up-to-date Access List to restrict IRS report access to only those staff meeting annual training requirement,
- Make sure any notes and all IRS reports are shredded appropriately and timely (5/16" on the bias or cross cut shredded)

12

IRS Custodian must (continued):

- Test IRS locking cabinet lock periodically to ensure security
- Ensure that adequate back up coverage exists to maintain consistent security when primary IRS Custodian gone

13