



DSHS and INDIAN NATION AGREEMENT

on

GENERAL TERMS and CONDITIONS

DSHS AGREEMENT NUMBER

These General Terms and Conditions are between the Indian Nation identified below and the State of Washington Department of Social and Health Services (DSHS). These General Terms and Conditions only govern work to be performed under Program Agreements between the parties.

INDIAN NATION AGREEMENT NUMBER

INDIAN NATION NAME

INDIAN NATION DIVISION OR AGENCY

FEDERAL EMPLOYER ID NUMBER

INDIAN NATION ADDRESS

INDIAN NATION TELEPHONE NUMBER

INDIAN NATION FAX NUMBER

DSHS CONTRACTS OFFICE ADDRESS

Central Contract Services
Post Office Box 45811
Olympia, Washington 98504-5811

DSHS CONTRACTS OFFICE TELEPHONE

360-664-6055

AGREEMENT START DATE

September 1, 2011

AGREEMENT END DATE

June 30, 2017

By their signatures below, the parties agree to this Agreement on General Terms and Conditions and certify that they are authorized, as representatives of their respective governments, to sign this Agreement.

INDIAN NATION SIGNATURE

PRINTED NAME AND TITLE

DATE SIGNED

DSHS SIGNATURE

PRINTED NAME AND TITLE
Monika Vasil
Contracts Administrator

DATE SIGNED

The State of Washington and the Indian Nation named above are sovereign governments. The Department of Social and Health Services (DSHS) and the Indian Nation agree to these 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 to provide efficient and beneficial services to their people.

1. **Definitions.** The words and phrases listed below, as used herein, shall each have the following definitions:
- a. "Agreement" means this Indian Nation and DSHS Agreement regarding General Terms and Conditions, any Program Agreements between the parties, and any other documents attached to or incorporated therein by reference. Unless plainly inconsistent with context, the term "Agreement" includes and refers to all such agreements collectively.
 - b. "Central Contract Services" means the DSHS contracting office or successor section or office.
 - c. "Confidential Information" means information that is exempt from disclosure to the public or other unauthorized persons under RCW 42.56 or other federal, state, or Tribal laws. Confidential Information includes, but is not limited to, Personal Information.
 - d. "Contracts Administrator" means the DSHS statewide department Contracts Administrator, or successor, of Central Contract Services or successor section or office.
 - e. "DSHS" or "the department" means the Department of Social and Health Services of the State of Washington and its administrations, divisions, programs, employees, and authorized agents.
 - f. "DSHS Representative" means any DSHS employee who has been delegated contract-signing authority by the DSHS Secretary or his/her designee.
 - g. "Indian Nation" means the federally recognized Indian Tribe that has executed this Agreement and its designated subdivisions and agencies performing services pursuant to this Agreement and includes the Indian Nation's officers, employees, and/or agents. For purposes of any permitted Subcontract, "Indian Nation" includes any Subcontractor of the Indian Nation and the Subcontractor's owners, members, officers, directors, partners, employees, and/or agents.
 - h. "Personal Information" means information identifiable to any person, including, but 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 numbers.
 - i. "Program Agreement" or "Indian Nation and DSHS Program Agreement" means an agreement between the Indian Nation and DSHS which incorporates these General Terms and Conditions and contains special terms and conditions, including a statement of work to be performed by the Indian Nation and payment to be made by DSHS.
 - j. "RCW" means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections shall include any successor, amended, or replacement statute, as of the effective date of such successor, amended, or replacement statute.
 - k. "Subcontract" means a separate contract between the Indian Nation and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Indian Nation is obligated to perform pursuant to any Program Agreement.
 - l. "Tribal Law" means the resolutions, law, codes, and/or ordinances enacted by the Indian Nation executing this Agreement, and any of the Indian Nation's tribal court decisions interpreting the same. All references in this Agreement to tribal law shall include any successor, amended, or replacement law, as of the effective date of such successor, amended, or replacement law.
 - m. "Tribal Authority" means any person or persons the Tribe has authorized through a letter or resolution designating contract signing authority.

- n. "WAC" means the Washington Administrative Code. All references in this Agreement to WAC chapters or sections shall include any successor, amended, or replacement regulation, as of the effective date of such successor, amended, or replacement regulation.
2. **Amendment.** This Agreement, or any term or condition, may be modified by a written amendment signed by both parties. Only personnel authorized to bind each of the parties may sign an amendment.
 3. **Assignment.** The Indian Nation shall not assign this Agreement, or its rights or obligations, without obtaining prior written consent of DSHS. DSHS shall not recognize any assignment without such prior written consent. In the event that consent is given and this Agreement is assigned, all terms and conditions of this Agreement shall be binding upon the Indian Nation's successors and assigns.
 4. **Compliance with Applicable Law.** At all times during the term of this Agreement, the parties shall comply with all applicable federal, tribal, and state laws and regulations.
 5. **Confidentiality.**
 - a. The parties shall not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of any Program Agreement for any purpose that is not directly connected with the performance of the services contemplated hereunder, except:
 - (1) as provided by law; or,
 - (2) in the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.
 - b. The parties shall protect and maintain all Confidential Information gained by reason of any Program Agreement against unauthorized use, access, disclosure, modification or loss. This duty requires the parties to employ reasonable security measures, which include restricting access to the Confidential Information by:
 - (1) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.
 - (2) Physically securing any computers, documents, or other media containing the Confidential Information.
 - c. To the extent allowed by law, at the end of the Agreement term, or when no longer needed, the parties shall return Confidential Information or certify in writing the destruction of Confidential Information upon written request by the other party.
 - d. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site through shredding, pulping, or incineration.
 - e. The compromise or potential compromise of Confidential Information must be reported to the DSHS Contact designated on the contract within five (5) business days of discovery. The parties must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law.
 6. **Culturally Relevant Services.** In performing work pursuant to any Program Agreement, the Indian Nation may develop and operate programs and deliver goods, services, and/or benefits in a manner that is culturally relevant and appropriate, and that is particularly suited to and/or particularly located for access by members of the Indian Nation's tribe or other tribes, in accordance with tribal laws and

policies.

7. **Debarment Certification.** The Indian Nation, by signature to this Agreement, certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any Federal department or agency. The Indian Nation also agrees to include the above requirement into any subcontracts entered into in connection with the Indian Nation's duty to provide services under this Agreement.
8. **Disputes.** Disputes shall be referred to a Dispute Board. Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed 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.
9. **Hiring and Employment Practices.** The Indian Nation may give preference in its hiring and employment practices to members of the Indian Nation, or other Indian Nations, who have met all requirements for that position, including state requirements, and as may be provided by tribal laws and policies.
10. **Independent Status.** For purposes of this Agreement, the Indian Nation acknowledges that the Indian Nation is not an officer, employee, or agent of DSHS or the State of Washington. The Indian Nation shall not hold out itself, or any of its employees as, nor claim status as, an officer, employee, or agent of DSHS or the State of Washington. The Indian Nation shall not claim for itself or its employees any rights, privileges, or benefits which would accrue to an employee of the State of Washington. The Indian Nation shall indemnify and hold harmless DSHS from all obligations to pay or withhold federal or state taxes or contributions on behalf of the Indian Nation or its employees.
11. **Inspection.** During the term of this Agreement and for one (1) year following termination or expiration of this Agreement, the Indian Nation shall provide reasonable access to the Indian Nation's place of business, relevant Indian Nation records, and client records, to DSHS and to any authorized agent of the state of Washington or the federal government in order to monitor, audit, and evaluate the Indian Nation's performance and compliance with applicable laws, and regulations that pertain solely to this Agreement.
12. **Insurance.** DSHS shall recommend insurance coverage in, and as appropriate to, individual Program Agreements. The Indian Nation may provide DSHS with its Certificate of Insurance, or consult with DSHS Central Contract Services at 360.664.6055, for guidance on appropriate levels of coverage. Certificates of Insurance may be mailed to: DSHS Central Contract Services, P.O. Box 45811, Olympia, WA, 98504-5811.
13. **Maintenance of Records.** During the term of any Program Agreement and for six years following termination or expiration of the Program Agreement, the parties shall maintain records sufficient to:
 - a. Document performance of all acts required by any Program Agreement and applicable statutes, regulations, and rules;
 - b. Substantiate the Indian Nation's statement of its organization's structure, tax status, administrative capabilities, and performance; and
 - c. Demonstrate accounting procedures, practices, and records, which sufficiently and properly document all invoices, expenditures, and payments.
14. **Notification of Funding.** DSHS shall notify the Indian Nation of any projected or anticipated budget

increase or decrease that affects any program or service contained in its Tribal Plan. This includes one time surplus funding that could be obligated for unmet needs in Indian Nation services and program development.

15. **Operation of General Terms and Conditions.** These General Terms and Conditions are incorporated by reference into and shall govern and apply to each Program Agreement between the Indian Nation and DSHS in effect on or after the effective date of these General Terms and Conditions.
16. **Order of Precedence.** In the event of any inconsistency in these General Terms and Conditions and any Program Agreement the inconsistency shall be resolved by giving precedence to the applicable Program Agreement and its attachments over these General Terms & Conditions.
17. **Ownership of Material.**
 - a. All materials of unique cultural significance shall be owned solely by the Indian Nation unless otherwise expressly agreed in the applicable Program Agreement.
 - b. Materials created by the Indian Nation which the Indian Nation uses to perform the Program Agreement (including without limitation books, computer programs, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes and/or training materials) shall be owned by the Indian Nation, regardless of whether the materials are paid for in whole or in part by DSHS, except when such materials have been expressly identified within the applicable Program Agreement as belonging to DSHS.
 - c. If the parties agree within a Program Agreement that certain materials will be owned by DSHS, then the Indian Nation agrees that the materials so identified will either be deemed, to the extent applicable under 17 U.S.C.A. Section 101, "works made for hire," or the Indian Nation will assign to DSHS all rights, title and interest in and to such materials.
18. **Responsibility.** The Indian Nation shall be responsible for the acts or omissions of the Indian Nation and its agents, employees, and officers. DSHS shall be responsible for the acts or omissions of DSHS and its officers, employees, and agents.
19. **Severability.** The provisions of the Agreement are severable. If any provision of the Agreement, including any provision of any document incorporated by reference, is held invalid by any court that invalidity shall not affect the other provisions of the Agreement and the invalid provision shall be considered modified to conform to existing law and regulations.
20. **Sovereign Immunity.** Nothing whatsoever in this Agreement constitutes or shall be construed as a waiver of the Indian Nation's sovereign immunity.
21. **Subcontracting.** Either party may subcontract services to be provided under Program Agreements. In any event, the Indian Nation shall remain ultimately responsible to DSHS and DSHS shall remain ultimately responsible to the Indian Nation for performance of all duties and obligations within these General Terms and Conditions and in any Program Agreement. Each party shall be responsible for the acts and omissions of its subcontractors.
22. **Subrecipients.** If, as a result of this Agreement, the Indian Nation is a subrecipient of federal awards as defined by the Office of Management and Budget (OMB) Circular A-133, the Indian Nation shall follow all requirements of OMB Circular A-87 and OMB Circular A-133, including requirements regarding the reimbursement and the overpayment of unallowable costs, and shall abide by any amendments to OMB Circular A-87 and OMB Circular A-133 that may occur during the term of this Agreement.
23. **Termination Due to Change in Funding.**

- a. If the funds that DSHS relied upon to establish any Program Agreement are withdrawn, reduced, or limited, or if additional or modified conditions are placed on such funding, and such changes materially affect the ability of DSHS to provide funds or to perform under the Program Agreement, DSHS shall notify and consult with the Indian Nation as soon as practicable and, as a last resort, may terminate the Program Agreement by providing at least fifteen (15) calendar days' written notice to the Indian Nation.
- b. If funds are available, DSHS shall pay the Indian Nation for its reasonable costs that directly relate to termination of the Program Agreement. The parties may identify such costs in any Program Agreement. Such costs may include, but are not limited to, close-out costs, unemployment costs, severance pay, retirement benefits, reasonable profits, and termination costs associated with any subcontract.

24. Termination for Convenience. Except for agreements regarding personal services, either party may terminate any Program Agreement by giving the other party at least thirty (30) calendar days' written notice. The Indian Nation shall address such notice to: Central Contract Services, PO Box 45811, Olympia, Washington 98504-5811. DSHS shall direct such notice to the Indian Nation Contact named in the first page of the applicable Program Agreement. If either party terminates any Program Agreement for convenience, the terminating party may pay an amount agreed to by the parties for actual costs incurred by the non-terminating party in performance of or in reliance on the Program Agreement.

25. Termination for Default.

- a. The Contracts Administrator may terminate any Agreement for default, in whole or in part, by written notice to the Indian Nation if DSHS has a reasonable basis to believe that the Indian Nation has:
 - (1) Failed to meet or maintain any requirement for contracting with DSHS, as specified in any Program Agreement or Tribal Plan;
 - (2) Failed to perform under any provision of the applicable Agreement;
 - (3) Negligently failed to ensure the health or safety of any client for whom services are being provided under any Program Agreement;
 - (4) Violated any applicable law, regulation, rule, or ordinance related to any Program Agreement; and/or
 - (5) Otherwise breached any provision or condition of the Agreement.
- b. The Contracts Administrator shall give the Indian Nation at least ten (10) business days' notice of DSHS' intent to terminate an Agreement, along with a summary of the facts supporting such termination. The Indian Nation shall have at least ten (10) business days in which to cure the default provided that if it will reasonably take longer than ten (10) business days to cure the default, the cure period shall be a reasonable period agreed by the parties. In the event of a continuing pattern of default, the Contracts Administrator shall not be required to provide a cure period. The Contracts Administrator is not required to offer a cure period if a client's health or safety is at risk, except this provision does not apply if the alleged default is an activity related to tribal law, custom, or practice.
- c. The Indian Nation may terminate any Agreement for default, in whole or in part, by written notice to DSHS, if the Indian Nation has a reasonable basis to believe that DSHS has:
 - (1) Failed to meet or maintain any requirement for contracting with the Indian Nation;
 - (2) Failed to perform under any provision of the applicable Agreement;

(3) Violated any law, regulation, rule, or ordinance applicable to work performed under the Agreement; and/or

(4) Otherwise breached any provision or condition of the Agreement.

- d. Before the Indian Nation may terminate an Agreement for default, the Indian Nation shall provide DSHS at least ten (10) business days written notice of the Indian Nation's intent to terminate the Agreement, along with a summary of the facts supporting such termination. DSHS shall have at least ten (10) business days in which to cure the default provided that if it will reasonably take longer than ten (10) business days to cure the default, the cure period shall be a reasonable period agreed by the parties.

26. Termination Procedure. The following provisions shall survive and be binding on the parties in the event any Agreement is terminated:

- a. The Indian Nation shall cease to perform any services required by the Agreement as of the effective date of termination and shall comply with all reasonable instructions contained in the notice of termination.
- b. If requested by DSHS within ten (10) days of termination, the Indian Nation shall, within a period not to exceed thirty (30) business days, deliver to DSHS all DSHS assets (property) in its possession. If the Indian Nation does not return DSHS property within thirty (30) business days of the Agreement termination, the Indian Nation shall be charged with all reasonable costs of recovery, including transportation and attorney's fees. The Indian Nation shall protect and preserve any property of DSHS that is in the possession of the Indian Nation pending return to DSHS.
- c. DSHS shall be liable for and shall pay for those services authorized and provided through the date of termination. DSHS may pay an amount agreed to by the parties for partially completed work and services, if work products are useful to or usable by DSHS.
- d. If the Contracts Administrator terminates any Agreement for default, DSHS may withhold a sum from the final payment to the Indian Nation that is reasonable and necessary to protect DSHS against reasonably anticipated loss or liability. DSHS shall provide the Indian Nation with written notice of the amount withheld and the nature of the reasonably anticipated loss or liability. If it is later determined that the Indian Nation was not in default, DSHS shall pay the amount withheld to the Indian Nation within ten (10) business days of determining that the Indian Nation was not in default.

27. Treatment of DSHS Assets. Except as otherwise provided in any Program Agreement, title to all assets (property) purchased or furnished by DSHS for use by the Indian Nation during the Program Agreement term shall remain with DSHS. During the term of any Program Agreement, the Indian Nation shall protect, maintain, and insure all DSHS property in the Indian Nation's possession against loss or damage.

28. Waiver. Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of the Agreement. Only the Contracts Administrator or designee has the authority to waive any term or condition of this Agreement on behalf of DSHS. Only the Tribe's official designee has the authority to waive any term or condition of this Agreement on behalf of the Indian Nation.