



**INDIAN NATION AGREEMENT**

HCA Contract Number: K  
Indian Nation Agreement Number:

**THIS INDIAN NATION AGREEMENT (AGREEMENT)** is made by and between the Washington State Health Care Authority (HCA) and (Indian Nation).

INDIAN NATION NAME		INDIAN NATION DIVISION OR AGENCY		
INDIAN NATION ADDRESS Street		City	State Washington	Zip Code
INDIAN NATION CONTACT		TELEPHONE	INDIAN NATION E-MAIL ADDRESS	
Is Indian Nation a Subrecipient under this Contract? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		CFDA NUMBER(S): 93.959; 93.788	FFATA Form Required <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	

HCA PROGRAM Office of Tribal Affairs	HCA DIVISION/SECTION
HCA CONTACT NAME AND TITLE Jessie Dean, Tribal Affairs Administrator	HCA CONTACT ADDRESS Health Care Authority 626 8th Avenue SE PO Box 45502 Olympia, WA 98504-5502
HCA CONTACT TELEPHONE (360) 725-1649	HCA CONTACT E-MAIL ADDRESS tribalaffairs@hca.wa.gov

This Agreement will automatically renew for subsequent five-year terms unless either Party provides written notice to the other Party of the intent not to renew this Agreement 30 calendar days prior to the end of the Term.

AGREEMENT START DATE July 1, 2019	AGREEMENT END DATE June 30, 2021	Total Contract Amount
--------------------------------------	-------------------------------------	-----------------------

The parties signing below warrant that they have read and understand this Agreement, and have authority to execute this Agreement. This Agreement will be binding on HCA only upon signature by HCA.

INDIAN NATION SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED
HCA SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED

## Contents

1. AUTHORITY .....	44
2. PURPOSE .....	44
3. DEFINITIONS.....	44
4. TERM.....	66
5. AMENDMENT .....	66
6. ASSIGNMENT .....	66
7. COMPLIANCE WITH APPLICABLE LAW.....	66
8. CONFIDENTIALITY .....	66
9. CONFLICT RESOLUTION/DISPUTES .....	77
10. CONTRACT MANAGEMENT .....	77
11. CULTURALLY RELEVANT SERVICES .....	77
12. DEBARMENT CERTIFICATION.....	88
13. GOVERNING LAW .....	88
14. HIRING AND EMPLOYMENT PRACTICES.....	88
15. INDEPENDENT STATUS .....	88
16. INSURANCE .....	88
17. LEGAL NOTICES .....	88
18. MONITORING.....	99
19. NOTIFICATION OF FUNDING .....	99
20. OPERATION AND ORDER OF PRECEDENCE.....	99
21. OWNERSHIP OF MATERIAL .....	99
22. PUBLIC DISCLOSURE .....	1040
23. RECORDS AND RIGHT OF ACCESS .....	1040
24. REPORTING .....	1040
25. REQUIREMENTS .....	1040
26. RESPONSIBILITY .....	1040
27. RESPONSIBILITIES OF THE HEALTH CARE AUTHORITY .....	1111
28. SEVERABILITY.....	1111
29. SOVEREIGN IMMUNITY – NO WAIVER.....	1111
30. SUBCONTRACTING .....	1111
31. SUBRECIPIENTS .....	1212
32. SURVIVABILITY.....	1212
33. SCOPE OF WORK RENEGOTIATION, SUSPENSION, OR TERMINATION DUE TO CHANGE IN FUNDING .....	1212
34. TERMINATION OR CANCELLATION .....	1212
35. TERMINATION FOR CONVENIENCE .....	1313

36.	TERMINATION FOR DEFAULT.....	<del>1313</del>
37.	TERMINATION PROCEDURE.....	<del>1414</del>
38.	TREATMENT OF HCA ASSETS.....	<del>1414</del>
39.	WAIVER.....	<del>1414</del>

**Attachments**

~~Attachment 1: Confidential Information Security Requirements (if applicable)~~

Attachment 21: Federal Compliance, Certifications and Assurances

Attachment 32: Federal Funding Accountability and Transparency Act Data Collection Form ~~(if applicable)~~

**Commented [A1]:** This attachment removed by HCA after 10/2 Tribal Consultation as no longer used.

**Commented [A2]:** Parenthetical language removed by HCA as not necessary.

**Schedule(s)**

Schedule 1: Scope of Work – Behavioral Health Programs

## 1. Authority

This Indian Nation Agreement (Agreement) is entered into between the ( ), (Indian Nation) and the Washington State Health Care Authority (HCA) (collectively, Parties) pursuant to their respective governmental authorities. The ( ) is authorized to enter into this Agreement under its constitution, legislative resolution, and other applicable tribal authority. HCA is authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, RCW 39.34, which permits any state agency to enter into a cooperative agreement with an Indian Nation for their mutual advantage and cooperation.

The Indian Nation Agreement, together with all schedules and attachments (including all exhibits to any schedules), constitutes the final, complete, and exclusive statement of the agreement of the Parties relative to the subject matter hereof and supersedes all previous or contemporaneous oral and written proposals, negotiations, representations, or understandings concerning such subject matter. The Parties intend that this Agreement be liberally construed to effectuate its intent and purposes.

## 2. Purpose

The Indian Nation and HCA enter into this Agreement to:

- a. Recognize the government-to-government relationship between the tribes and both the United States government and the Washington State government.
- b. Respect the Indian Nation's inherent right to design and operate culturally relevant and appropriate programs on behalf of the population served.
- c. Increase the quality and efficiency of state and tribal benefits and services to Washington State American Indian/Alaska Native (AI/AN) individuals and non-AI/AN individuals served by the Indian Nation.

## 3. Definitions

The Indian Nation and the HCA agree to the following definitions for the purposes of this Agreement.

- a. "Administrative Costs" means the costs incurred by the Indian Nation that are not attributable to direct services. Examples of Administrative Costs include non-direct costs associated with customer service, utilization management, network development, and quality management programs.
- b. "CFR" means the Code of Federal Regulations. All references in this Agreement to CFR chapters or sections include any successor, amended, or replacement regulation, or any successor or replacement federal Office of Management and Budget circular or regulation as of the effective date of such successor, amended, or replacement regulation or circular.
- 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 Law. Confidential Information includes, but is not limited to, Personal Information.
- d. "Health Care Authority" or "HCA" means the Washington State Health Care Authority, any division, section, office, unit or other entity of HCA, or any of the officers or other officials lawfully representing HCA.
- e. "HHS" means the U.S. Department of Health and Human Services, any administration, division, section, office, unit or other entity of HHS, or any of the officers or other officials lawfully representing HHS.

- f. "Indian Nation" or "Tribe" 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.
- g. "Indian Nation Agreement" or "Agreement" means this Agreement, and any attachments, schedules (including exhibits therein), and 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.
- h. "Monitor" or "Monitoring" means any planned and ongoing or periodic activity by HCA to ensure that the expenditures under the Agreement are spent for authorized purposes, in compliance with the requirements of 45 CFR Part 75 for federal and state funds and the Scope of Work, including (i) reviewing financial and performance reports submitted by the Indian Nation; (ii) following-up and ensuring that the Indian Nation takes timely and appropriate action, if applicable, on all deficiencies pertaining to the federal funds; (iii) providing training and technical assistance on Scope of Work related matters; and (iv) arranging for agreed-upon procedures engagements limited in scope to activities allowed or unallowed, allowable cost/cost principles, eligibility, and reporting.
- i. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, tribal citizenship or enrollment status, 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. Personal Information includes "Protected Health Information" as set forth in 45 CFR § 160 and 164, as currently written and subsequently amended and other information that may be exempt from disclosure to the public or other unauthorized persons under federal, tribal, or state law.
- j. "Protected Health Information" or "PHI" means information that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present, or future payment for provision of health care to an individual. 45 CFR § 160 and 164. PHI includes demographic information that identifies the individual or about which there is reasonable basis to believe, can be used to identify the individual. 45 CFR § 160.103. PHI is information transmitted, maintained, or stored in any form or medium. 45 CFR § 164.501. PHI does not include education records covered by the Family Educational Right and Privacy Act, as amended, 20 USC § 1232g(a)(4)(b)(iv).
- k. "RCW" means the Revised Code of Washington. All references in this Agreement to RCW chapters or sections includes any successor, amended, or replacement statute, as of the effective date of such successor, amended, or replacement statute.
- l. "Scope of Work" means any schedule to this Agreement, each of which is incorporated into this Agreement, establishing special terms and conditions for services to be provided by the Indian Nation as described therein.
- m. "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 Scope of Work.
- n. "Tribal Law" means the resolutions, laws, 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 includes any successor, amended, or replacement law, as of the effective date of such successor, amended, or replacement law.

- o. "WAC" means the Washington Administrative Code. All references in this Agreement to WAC chapters or sections include any successor, amended, or replacement regulation, as of the effective date of such successor, amended, or replacement regulation.

**4. Term**

This Agreement becomes effective July 1, 2019 and ends on June 30, 2024. This Agreement will automatically renew for subsequent five-year terms unless either Party provides written notice to the other Party of the intent not to renew this Agreement 30 calendar days prior to the end of the Term.

The Parties agree that nothing in this section will prohibit the Parties from agreeing to a term within a Scope of Work that is different from the term that is provided in this section so long as the term in a Scope of Work begins and ends within the term established under this section.

**5. Amendment**

This Agreement, including any Scope of Work, may be amended or renegotiated by mutual and written agreement of the Parties. The Parties agree to follow the amendment process established in this Agreement.

Such amendments will not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

**6. Assignment**

The Indian Nation will not assign or transfer all or any portion of this Agreement or any of its rights or obligations, without obtaining prior written consent of HCA. HCA will not recognize any assignment without such prior written consent. In the event that consent is given and this Agreement or any portion thereof is assigned, all terms and conditions of this Agreement are binding upon the Indian Nation's assignees.

**7. Compliance with Applicable Law.**

At all times during the term of this Agreement, the Parties will comply with all applicable federal, tribal, and state laws and regulations.

**8. Confidentiality**

- a. The Parties will not use, publish, transfer, sell, or otherwise disclose any Confidential Information gained by reason of this Agreement for any purpose that is not directly connected with the performance of the services contemplated hereunder, except as provided by law.
- b. The Parties will protect and maintain all Confidential Information gained by reason of this 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, the Parties will 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) will be destroyed on-site through shredding, pulping, or incineration.
- e. The compromise or potential compromise of Confidential Information will be reported to the HCA Contact within five (5) business days of discovery. The Parties will also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law.

**9. Conflict Resolution/Disputes**

- a. The Parties agree to work cooperatively to accomplish all of the terms of this Agreement. However, the Parties acknowledge that there may be instances in which either the Tribe or HCA has not complied with the conditions of this Agreement. In such an instance, the Tribe and HCA will attempt to resolve the matter through discussions. If unsuccessful, the Tribe and HCA agree to refer the issue to a Dispute Board and abide by the decisions of the Dispute Board.
- b. The Dispute Board will consist of three individuals, one selected by the Tribe, one selected by HCA, and a third party to be chosen by the first two. The Dispute Board will review the facts, Agreement terms, terms in any applicable Scope of Work, and applicable statutes and regulations and make a determination regarding the dispute.

**10. Contract Management**

The contract manager for each of the Parties will be responsible for and will be the contact person for all communications and billings regarding this Agreement, and they are listed below. Each Party will have the right to change its contract manager by providing written notice to the other Party of the name and contact information for the new contract manager. The Parties may identify different managers for any Scope of Work.

Indian Nation Contract Manager Information		Health Care Authority Contract Manager Information	
Name:		Name:	Jessie Dean
Title:		Title:	Tribal Affairs Administrator
Address:		Address:	PO Box 45502 Olympia WA 98504-5502
Phone:		Phone:	(360) 725-1649
Email:		Email:	tribalaffairs@hca.wa.gov

**11. Culturally Relevant Services**

In reviewing and agreeing to any Scope of Work, HCA will respect and support the Indian Nation's ability to 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 and other community members, in accordance with Tribal Law and policies.

**12. 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.

**13. Governing Law**

This Agreement is governed and construed in accordance with applicable federal law of the United States and, to the extent an issue is not addressed by federal law, in accordance with the applicable laws of the state of Washington governing interpretation of contracts.

**14. 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 (including for purposes of this section Indian Nations previously but not currently recognized by the federal government) or their descendants, who have met all requirements for that position, including applicable federal law and Tribal Law and policies.

**15. Independent Status**

For purposes of this Agreement, the Indian Nation acknowledges that the Indian Nation is not an officer, employee, or agent of HCA or the state of Washington. The Indian Nation will not hold out itself, or any of its employees as, nor claim status as, an officer, employee, or agent of HCA or the state of Washington. The Indian Nation will not claim for itself or its employees any rights, privileges, or benefits which would accrue to an employee of the state of Washington.

**16. Insurance**

HCA will recommend insurance coverage in, and as appropriate to, individual Scopes of Work. Upon request and only to the extent of liability not covered by the Federal Tort Claims Act (28 U.S.C. § 1346), the Indian Nation may provide to HCA a certificate of insurance that outlines the coverage and limits defined in the insurance section of the individual Scope of Work or consult with HCA for guidance on appropriate levels of coverage. If HCA requests a certificate of insurance, then the Indian Nation will submit renewal certificates as appropriate during the term of the Agreement.

**17. Legal Notices**

- a. Any notice, demand, or other communication required or permitted to be given under this Agreement or applicable law is effective only if it is in writing and signed by the applicable Party, properly addressed, and delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the Parties at the addresses provided in this section.

LEGAL NOTICES		
Indian Nation		Health Care Authority
Name:		ATTN: Contracts Administrator
Address:		Health Care Authority Division of Legal Services PO Box 45502 Olympia WA 98504-5502

- b. Notices are effective upon receipt or four business days after mailing, whichever is earlier.
- c. The notice address and information provided above may be changed by written notice of the change given as provided above.

**18. Monitoring**

The Indian Nation and HCA agree as follows:

- a. Under 45 CFR Part 75, HCA is legally obligated to Monitor and will Monitor the activities of the Indian Nation under the Agreement and any Scope of Work for compliance with applicable federal, including 2 CFR Part 200, 45 CFR Part 75.
- b. The Indian Nation and HCA will make good faith efforts to collaborate in these Monitoring activities, including providing HCA with copies of any records or supporting documents which are pertinent to a Scope of Work upon request.
- c. To honor tribal sovereignty in a manner consistent with chapters 43.71B and 43.376 RCW, HCA will not conduct on-site reviews on tribal land without advance invitation in writing from the Indian Nation.

**19. Notification of Funding**

HCA will notify the Indian Nation of any projected or anticipated budget increase or decrease that materially affects any program or service under a Scope of Work as soon as reasonably practicable. This includes one-time surplus funding that could be obligated for unmet needs in Indian Nation services and program development.

**20. Operation and Order of Precedence**

Each Scope of Work between the Indian Nation and HCA, in effect on or after the effective date of this Agreement, is incorporated by reference into this Agreement and is governed by this Agreement. In the event of any inconsistency in this Agreement and any Scope of Work, the inconsistency will be resolved by giving precedence to the applicable Scope of Work and its attachments over this Agreement.

**21. Ownership of Material**

- a. The Indian Nation solely owns all materials of unique cultural significance unless otherwise expressly agreed in the applicable Scope of Work.
- b. Materials created by the Indian Nation which the Indian Nation uses to perform the Scope of Work (including without limitation books, computer programs, documents, films, pamphlets, reports, sound reproductions, studies, surveys, tapes and/or training materials) will be owned by the Indian Nation,

regardless of whether the materials are paid for in whole or in part by HCA, except when such materials have been expressly identified within the applicable Scope of Work as belonging to HCA.

## 22. Public Disclosure

The Indian Nation acknowledges that this Agreement, including all attachments, schedules, exhibits, and addenda hereto, is subject to the Public Records Act (RCW 42.56) and that any documents submitted by the Indian Nation to HCA may be subject to disclosure under such law except as explicitly provided herein.

## 23. Records and Right of Access

In accordance with the requirements of 45 CFR Part 75, 2 CFR Part 200, the Indian Nation and HCA agree as follows:

- a. The Indian Nation will retain all financial records, supporting documents, statistical records, and all other Indian Nation records pertinent to the Agreement and any Scope of Work;
- b. The Indian Nation will ensure all accounting records, including all invoices, expenditures, and payments, are maintained in accordance with applicable generally accepted accounting principles;
- c. The Indian Nation will ensure all transactions will be made in compliance with 45 CFR Part 75 and 2 CFR Part 200 for federal funds;
- d. The Indian Nation will provide information necessary for the HCA to comply with 45 CFR Part 75 and 2 CFR Part 200.

## 24. Reporting

The Indian Nation will submit the reports and supporting documentation on or before the due dates set forth in the applicable Scope of Work.

## 25. Requirements

a. If the Indian Nation receives federal funds under this Scope of Work, the requirements of 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) applicable to subrecipients of federal grant monies apply to the Indian Nation under this Scope of Work. If the federal funds received under this Scope of Work are from the U.S. Department of Health and Human Services, the requirements of 45 CFR Part 75 also apply to HCA and the Indian Nation. In addition, the Indian Nation and HCA agree that the federal funds will be expended in accordance with this Agreement and the Tribal Plan. If the Indian Nation's Single Audit Report contains audit findings related to the Scope of Work, HCA and the Indian Nation will develop and agree on a corrective action plan to address the audit findings as required by 2 CFR Part 200, Appendix XI, Section 3.1 – M.

b. If the Indian Nation receives state funds but no federal funds under this Scope of Work, the Indian Nation and HCA agree that the state funds will be expended in accordance with this Agreement and the Tribal Plan.

## 25-26. Responsibility

The Indian Nation will be responsible for the acts or omissions of the Indian Nation and its officers and employees. HCA will be responsible for the acts or omissions of HCA and its officers and employees.

**Commented [A3]:** This section moved from SOW to Indian Nation Agreement as requested during 10/2 Tribal Consultation.

## 26-27. Responsibilities of the Health Care Authority

- a. HCA will promptly respond on a case-by-case basis to any written request by the Indian Nation regarding the Tribe's eligibility to access any newly funded services.
- b. As required by RCW 43.376.040, HCA will ensure that HCA employees receive training in:
  - 1) Effective communication and collaboration between state agencies and Indian tribes; and
  - 2) Cultural competency (cultural humility) in providing effective services to tribal governments and tribal members.
- c. HCA will support the Indian Nation in its efforts to petition the Legislature to amend statutory provisions that the Indian Nation finds burdensome, unless HCA determines that the requested amendment would be in direct conflict with a federal statute or regulation, be inconsistent with the purposes of the program, or be in conflict with program goals.
- d. HCA will respect Tribal Law that meets or exceeds the requirements set forth in federal or state law as it pertains to this Agreement.
- e. Compliance Testing
  - 1) HCA may test compliance with the terms of this Agreement in a combination of ways, including but not limited to:
    - (a) Review of reports submitted by the Indian Nation to HCA.
    - (b) Review of any documents related to the services provided pursuant to this Agreement submitted from the Indian Nation's federal Single Audit Act audit, provided that such documents will not be subject to public disclosure if the Indian Nation has opted out of making the Single Audit report publicly available as permitted by 2 CFR § 200.512(b)(2).
    - (c) A biennial review of programs covered by this Agreement by conducting a [desk review review of documents submitted by the Indian Nation](#).

**Commented [A4]:** This section revised as requested during 10/1 Tribal Consultation.

## 27-28. 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 of competent jurisdiction, then that invalidity will not affect the other provisions of the Agreement and the invalid provision will be considered modified to conform to existing law and regulations.

## 28-29. Sovereign Immunity – No Waiver

Nothing whatsoever in this Agreement constitutes or will be construed as a waiver of either Party's sovereign immunity.

## 29-30. Subcontracting

Either Party may subcontract services to be provided under a Scope of Work. In any event, the Indian Nation will remain ultimately responsible to HCA and HCA will remain ultimately responsible to the Indian Nation for performance of all duties and obligations under this Agreement. Each Party will be responsible for the acts and omissions of its subcontractors.

### **30-31. Subrecipients**

If, as a result of this Agreement, the Indian Nation is a subrecipient of federal awards as defined by 2 CFR Part 200, the Indian Nation will comply with all applicable requirements of 2 CFR Part 200, including requirements regarding the reimbursement and the overpayment of unallowable costs.

### **31-32. Survivability**

The terms and conditions contained in this Agreement that by their sense and context are intended to survive the expiration or termination of this Agreement will so survive.

### **32-33. Scope of Work Renegotiation, Suspension, or Termination Due to Change in Funding.**

If the funds HCA relied upon to establish any program or service within a Scope of Work are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after the effective date of any Scope of Work but prior to the normal completion of the Scope of Work:

- a. The Scope of Work may be renegotiated under the revised funding conditions.
- b. HCA may give written notice to the Indian Nation to suspend performance when HCA determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow the Indian Nation's performance to be resumed prior to the normal completion date of any Scope of Work.
  - 1) During the period of suspension of performance, each Party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
  - 2) When HCA determines that the funding insufficiency is resolved, it will give the Indian Nation written notice to resume performance. Upon the receipt of this notice, the Indian Nation will provide written notice to HCA informing HCA whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
  - 3) If the Indian Nation's proposed resumption date is not acceptable to HCA and an acceptable date cannot be negotiated, HCA may terminate any Scope of Work by giving written notice to the Indian Nation. The Parties agree that the affected Scope of Work will be terminated retroactive to the date of the notice of suspension. HCA will be liable only for payment in accordance with the terms of the respective Scope of Work for services rendered prior to the retroactive date of termination.
- c. HCA may terminate any Scope of Work by providing ten calendar days' written notice to the Indian Nation. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of any affected Scope of Work for services rendered prior to the effective date of termination. No penalty will accrue to HCA in the event the termination option in this section is exercised.
- d. If funds are available, HCA will pay the Indian Nation for its reasonable costs that directly relate to termination of the Scope of Work. The Parties may identify such costs in any Scope of Work. 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.

### **33-34. Termination or Cancellation**

- a. The Indian Nation may terminate or return administrative responsibility to the state for any program prior to the end of the term of a Scope of Work and will provide HCA with notification of its intent to do so at least 60 calendar days prior to the effective date of the termination or retrocession.

- b. Any money paid to the Indian Nation by HCA to provide a service or program for the period of time that program administration is returned to the state by the Indian Nation will be paid back to the HCA prior to the effective date of the return of program administrative responsibility to the state.
- c. If the Tribe terminates or returns administrative responsibility to the state for a service or program contained in this Agreement or any Scope of Work, the Indian Nation and HCA may then execute a new and separate agreement to enable the Tribe to operate that service or program outside of the consolidated Agreement.

#### **34-35. Termination for Convenience**

Either Party may terminate any Scope of Work by giving the other Party at least 30 calendar days' written notice. If either Party terminates any Scope of Work 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 Scope of Work.

#### **35-36. Termination for Default.**

- a. HCA may terminate the Agreement for default, in whole or in part, by written notice to the Indian Nation if HCA has a reasonable basis to believe that the Indian Nation has:
  - 1) Failed to meet or maintain any requirement for contracting with HCA;
  - 2) Failed to perform under any provision of the Agreement;
  - 3) Negligently failed to ensure the health or safety of any client for whom services are being provided under any Scope of Work;
  - 4) Violated any applicable law, regulation, rule, or ordinance related to any Scope of Work; or
  - 5) Otherwise breached any provision or condition of the Agreement.
- b. HCA will give the Indian Nation at least fifteen business days' notice of HCA's intent to terminate the Agreement, along with a summary of the facts supporting such termination. Such notice will provide the Indian Nation at least ten business days in which to cure the default; provided, that if it will reasonably take longer than ten business days to cure the default, the cure period will be a reasonable period agreed by the Parties. In the event of a second or subsequent episode of default, HCA will not be required to provide a cure period. HCA 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 the Agreement for default, in whole or in part, by written notice to HCA, if the Indian Nation has a reasonable basis to believe that HCA has:
  - 1) Failed to meet or maintain any requirement for contracting with the Indian Nation;
  - 2) Failed to perform under any provision of the Agreement;
  - 3) Violated any law, regulation, rule, or ordinance applicable to work performed under the Agreement; or
  - 4) Otherwise breached any provision or condition of the Agreement.
- d. Before the Indian Nation may terminate the Agreement for default, the Indian Nation will provide HCA at least fifteen business days' written notice of the Indian Nation's intent to terminate the Agreement,

along with a summary of the facts supporting such termination. HCA will have at least ten business days in which to cure the default provided that if it will reasonably take longer than ten business days to cure the default, the cure period will be a reasonable period agreed by the Parties.

### **36-37. Termination Procedure**

The following provisions will survive and be binding on the Parties in the event the Agreement is terminated:

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

### **37-38. Treatment of HCA Assets**

Except as otherwise provided in any Scope of Work, title to all assets (property) purchased or furnished by HCA for use by the Indian Nation during the Scope of Work term will remain with HCA. During the term of any Scope of Work, the Indian Nation will protect, maintain, and insure all HCA property in the Indian Nation's possession against loss or damage.

### **38-39. Waiver**

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