

Tribe Copy []
Department Copy []
Tribe Number:

2012-2014
STATE AND TRIBE CONTRACT FOR THE
DEPARTMENT OF HEALTH SERVICES PROGRAMS

This Contract is made and entered into for the period of October 1, 2011 through September 30, 2014, by and between the Department of Health Services and the Governing Body of the [**Insert Legal Name of Tribe**], hereinafter referred to as the Tribe.

The Department's employee responsible for administration of this Contract is the Tribal Affairs Director, whose principal business address is Office of Policy Initiatives and Budget, Tribal Affairs Office, P. O. Box 7850, 1 West Wilson Street, Room 618, Madison, WI 53707-7850. In the event that the Contract Administrator is unable to administer this Contract, the Department will notify the Tribe and designate a new Contract Administrator.

WHEREAS, the Tribe is a federally recognized sovereign government; and

WHEREAS, the Department is authorized by s. 20.002 (13), Wis. Stats. to contract with the Tribe to ensure the efficient management and administration of programs which the Tribe is empowered to provide.

NOW, THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the Department and the Tribe agree as follows:

I. ADMINISTRATION OF DEPARTMENT PROGRAMS

- A. All program functions herein will be performed by the Tribe in accordance with this Contract, including its appendices and documents incorporated by reference, applicable Wisconsin Statutes, and the Wisconsin Administrative Code promulgated during the term of this Contract.
- B. The Tribe shall administer the funds provided in this Contract in accordance with state and federal laws, rules, regulations and conditions established by the Department, including but not limited to: Department Manuals, Handbooks, Bulletins and Numbered Memo Series. A list of manuals and handbooks is contained in Exhibit III, attached to and incorporated in this Contract by reference.

Unless otherwise stated, manuals and handbooks take precedence over other communications. If federal laws and regulations are in conflict with directives of the Department, the directives of the Department shall be followed. The Tribe shall be held harmless for following such Department directives.

- C. Failure to meet the purposes and conditions for the use of funds provided in this Contract will result in the loss of funds by the Tribe and the Tribe must repay the Department.

- D. The Tribe shall deposit Department funds in bank accounts insured by the FDIC and shall maintain, at a minimum, modified accrual accounting records which adequately identify deposits and expenditures for each contract line and subcontract. Account balances exceeding FDIC coverage must be collaterally secured.
- E. For contracts of ten thousand dollars (\$10,000) or more, the Tribe shall maintain a uniform double entry accounting system and a management information system compatible with standard cost accounting and control systems. See DHS Financial Management Manuals, available upon request.
- F. If this Contract results in a book, computer software, or other materials, the Department reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish or otherwise use, and to authorize others to use all material from the approved program.

Any discovery or invention arising out of, or developed in the course of work aided by this Contract, shall be promptly and fully reported to the Department.

- G. The Tribe shall conduct all procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value of the transactions, in a manner that provides maximum open and free competition.
- H. The Tribe will not engage the services of any person or persons now employed by the State of Wisconsin, including any department, commission or board thereof, to provide services relating to this Contract without the written consent of the employer of such person or persons and of the Department.
- I. The Department shall have all ownership rights in any software or modifications thereof and associated documentation designed, developed or installed as a result of this Contract.
- J. The Department and Tribe shall work together to ensure the efficient and effective operation of automated systems in support of the programs covered by this Contract.
- K. The Tribe shall keep all Department-owned data processing equipment in a secure place and compensate the Department for any theft, damage, or other loss of the equipment.
- L. The Department shall retain ownership of all Department-installed computer equipment and shall be responsible for maintenance and installation costs as specified by the Department.
- M. The Tribe agrees to comply with the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to the extent that the provisions of HIPAA apply to the services, activities or functions the Tribe performs or purchases with funds provided under this Contract.

Certain programs included in this Contract are defined as a health plan under HIPAA. The Department must comply with the provisions of HIPAA regarding health plans and has determined that the Tribe is a Business Associate for purposes of HIPAA. As a result, the Department requires the Tribe to sign and return the Business Associate Agreement included as Appendix A of this Contract.

II. REIMBURSEMENT

- A. The total amount of funding and the Contract period for each allocation is identified in Exhibit I. Prior to September 1 of this year Contract, Exhibit I will be revised. Exhibit I will require the signature of the Department's Secretary and the authorized representative of the Tribe prior to September 15 of each subsequent year of this three (3) year Contract before any payments to the Tribe are made.
- B. Prior year allocations do not carry over to subsequent years of this three (3) year contract.
- C. As soon as possible after executing this Contract and up to two months thereafter, the Department shall make payments to the Tribe on the fifth (5th) of each of those months in an amount of one month's estimated operating expenses. For example, a twelve (12) month contract equals one-twelfth (1/12) and a six (6) month contract equals one-sixth (1/6) of estimated operating expenses. This does not apply to direct reimbursement programs as outlined in the Tribal CARS Accounting Manual. Each month thereafter, the Department shall make a payment to the Tribe for expenditures reported on the financial forms required by the Department.

The Tribe may submit written requests to deviate from the payment process to meet special cash needs. Such requests with appropriate justification shall be submitted to the Contract Administrator. Upon receipt of adequate justification for deviation, the Department may allow such deviation.

- D. The Tribe agrees to submit to the Department the financial forms prescribed by the Department on a monthly basis no later than the fifteenth (15) of the month subsequent to the reporting period. The Department may delay the monthly payment if the Tribe does not submit required financial or program reports to the Department by the due date.
- E. The Department may increase or decrease or delay the monthly payment under one of the following conditions. The parties shall negotiate the timing and payment schedule of any adjustments under the following conditions:
 - 1. The Department determines, pursuant to an audit under Section V that there is an error in the Tribe's fiscal and service records for this funding period or previous Contracts and the Department submits the draft audit report of the error to the Tribe within twenty-five (25) months of the expiration of the funding period identified in Exhibit I. The Department shall limit the increase or decrease to the audited error and shall confer with the Tribe before increasing or decreasing the monthly payment for this Contract.
 - 2. The Department determines that the functions performed by the Tribe do not meet state or federal laws and requirements as stated in Section I of this Contract.
- F. The Tribe shall submit the final monthly financial report within ninety (90) days of the end of the funding period identified in Exhibit I. The Department may make no further

payment if the final monthly report or any previous monthly report is not received by this deadline.

- G. Payments to the Tribe shall not exceed three-fourths (3/4) of the total State funds during the first nine months of the funding period identified in Exhibit I.
- H. Within ninety (90) days of the end of the funding period identified in Exhibit I, the Tribe shall refund to the Department all funds received pursuant to this Contract that are unspent or unencumbered prior to the end of the funding period or the Department may recover such funds from the Tribe from subsequent payments made by the Department to the Tribe or by any other legal means.
- I. The initial three (3) months of payments will be recouped during the last three (3) months of expense reporting, or when reported expenditures equal or exceed seventy-five (75%) percent of the profile line amount, whichever comes first, for the funding period identified in Exhibit I. A final cash adjustment will be done after reconciliation of the Contract amounts to actual final reported expenses.

III. RECORDS

- A. At least forty-five (45) days prior to the effective date of any Department reporting or record keeping requirement, the Department shall provide the Tribe with written notice of such a proposed reporting or record keeping requirement and allow the Tribe an opportunity to review and comment on such a requirement. The Tribe may comment on its own behalf or use a single point of contact to communicate its concerns. Reporting and record keeping requirements which are the result of changes in federal or state laws, rules and regulations or any court actions may be implemented by the Department without strict compliance with the above stated notice and comment requirements. The Department shall make every reasonable effort to solicit comments from the Tribe prior to implementing such record keeping and reporting requirements.
- B. Fiscal Records

The Tribe shall maintain such records, financial statements and necessary evidences of accounting procedures and practices sufficient to document the funding received and reimbursements made under this Contract.
- C. Client Reporting

The Tribe shall maintain such records, reports, evaluations, or other documents specified by the Department for monitoring the activities performed under this Contract. Maintenance of such records is irrespective of the reporting requirements and is subject to manual provisions allowing destruction of records.

 - 1. The Tribe shall furnish such reports and documents to the Department in the format and according to the schedules required by the Department.
 - 2. The Department shall evaluate and monitor compliance with reporting instructions.

- D. All records maintained by the Tribe pursuant to this Contract shall be made available to the Department on request and with adequate notice for inspection, examination, or audit. Except when the Department determines that unusual circumstances exist, the Department will give the Tribe at least five (5) working days written notice unless the Tribe consents to a shorter time frame.
- E. The parties agree to comply with the applicable federal and state laws, rules and regulations concerning confidentiality of client records.
- F. Notwithstanding the above, nothing in the Contract shall be construed to limit, modify, or extinguish any federal or state agency's legal authority to inspect, audit, or have access to any records, financial statements or other reports maintained by the Tribe; or to modify or limit the Tribe's legal obligation to maintain any record or report required by state or federal laws, rules, or regulations.
- G. The Department shall monitor its requests for reports and evaluations to eliminate present and prevent future duplicate requests being sent to the Tribe.

IV. ADMINISTRATION OF DEPARTMENT PROGRAMS

- A. Subject to the terms and conditions set forth in this Contract, the Department agrees to fund the Tribe for the programs identified in Exhibit I attached to and incorporated in this Contract by reference.
- B. Fiscal Reporting Conditions on Earning of the Funds
 - 1. The Tribe shall report expenditures on the forms required by the Department using the Expenditure Reporting Profile Line(s) identified in Exhibit I and in accordance with the terms and conditions of this Contract.
- C. A work plan and budget identified as Exhibit II is attached to and incorporated in this Contract by reference. A new or revised work plan may be required for each year of the three (3) year Contract. A new budget will be required for each year of the three (3) year Contract.
- D. The Department may terminate funds for any of the programs identified in Exhibit I if a work plan and budget for the use of the funds is not approved by November 1 of each year of this three (3) year Contract period.
- E. Eligibility Standards
 - 1. The Tribe shall determine eligibility of individuals to receive the services to be purchased under this Contract from the Tribe in conformity with the eligibility standards or criteria established by the Department.
 - 2. Individuals are entitled to a fair hearing under Chapter 227, Wis. Stats., concerning eligibility for services.
- F. Program Reporting

1. The Tribe must submit to the Contract Administrator, program reports on forms designated by the Department according to the schedule determined by the Department for the programs identified in Exhibit I.

V. AUDITS

A. "Single Audit" Requirements

1. The Tribe shall hire an independent auditor to conduct a Single Audit pursuant to Office of Management and Budget (OMB) Circular A-133, the State Single Audit Guidelines published by the Wisconsin Department of Administration (DOA) and if applicable, audit guidelines established and provided by the Department. The audit shall be completed and a report submitted to the Tribe, which will enable the Tribe to comply with the submission requirements identified in V. A. 2. The Tribe shall incorporate by reference in the engagement letter (contract with the independent auditor), OMB Circular A-133, the State Single Audit Guide and any other federal and state audit guidelines.
2. The Tribe agrees to provide to the Department two (2) copies of the audit reporting package and any other supporting documentation required by the Department no later than nine (9) months following the close of the Tribe's fiscal year. The complete copies of the audit reporting package must be sent to the Department of Health Services, Office of Policy Initiatives and Budget, P.O. Box 7850, Room 639 Madison, Wisconsin 53707-7850. The audit reporting package shall consist of the report elements applicable to Tribes as required in OMB Circular A-133 and the State Single Audit Guidelines (2001 revision and subsequent updates) published by DOA.
3. The Department shall notify the Tribe whether or not the audit meets the requirements of the Department's audit guidelines, State Single Audit Guidelines published by DOA and OMB Circular A-133. With the exception of federal audits, if the audit is complete and accepted by the Department, the Department will not perform any additional audit work and there would be no additional audit exceptions taken other than those taken on the basis of the findings in the accepted audit. Additional examinations shall build upon the work already done and there will be no charge for Department-initiated examinations.

B. Department Reviews

1. In the event that the Department conducts a financial and compliance review, it will include the examination of financial records maintained by the Tribe. The review shall be conducted in accordance with Department procedures. This review will not meet the requirements of the Single Audit Act Amendments of 1996 for the Tribe.
2. The Department shall schedule a mutually acceptable entrance date with the Tribe with at least a ten (10) day advance notice, which is mutually agreed upon.

3. The Department agrees to provide the Tribe with a copy of the resultant report, management letter, and supporting documentation upon completion of the financial and compliance review.
4. The Department agrees to complete all draft reviews of the Tribe within twenty-five (25) months of the expiration date of the Contract year to be reviewed. The time limit for submitting a draft review report to the Tribe may be extended in unusual circumstances.
5. The Department reserves the right to conduct an independent financial and compliance review of the Tribe if the Tribe fails to secure a Single Audit covering all Department funds. The Department may take actions listed in the State Single Audit Guide for noncompliance with audit requirements.
6. The Department may conduct an additional review if a tribal action not identified in the Single Audit results in the loss of federal funds. This additional Department review will determine if an audit exception is appropriate.

C. Audit Resolution

The Department will initiate resolution of findings with the Tribe pursuant to Audit Resolution Policies developed by the Department.

- D. Nothing in this section shall be construed to govern the acceptance or guidance of the Tribe's activity by any state agency other than the Department.

E. Audit Disallowance

1. The Tribe shall be liable for the entire amount of the audit adjustment attributed to the Tribe. The actual amount of a disallowance against the Tribe shall be determined through the Department's Audit Disallowance Policy.
2. No fiscal sanction shall be taken against the Tribe unless it is based upon a specific policy which was: (a) effective during the time period which is being audited, and (b) communicated to the Tribe in writing by the Department or the federal government prior to the time period audited. No state audit adjustment for failure to meet the requirements of Section I. B. shall be imposed for sixty (60) days after the date the Tribe receives written notice of the requirement. The Department upon tribal proof of hardship may extend this sixty (60) day hold-harmless period. The sixty (60) day hold-harmless period is not required if (a) the state has been assessed a federal fiscal penalty because federal law and regulations or court order mandated the requirement and held the state to a more restrictive time period, (b) the state has been assessed a state fiscal penalty because state law and administrative or court order imposed a more restrictive time period. These conditions in no way negate the Tribe's responsibility to implement policies by their effective dates.

VI. INDEMNITY AND INSURANCE

- A. If not self-insured:

1. To the extent provided by Federal and Tribal law the tribe will be liable for, and will indemnify the Department against all loss, damages, and costs of expenses which the Department may sustain, incur, or be required to pay by reason of any eligible client's suffering personal injury, death, or property loss resulting from the Tribe's acts or omissions while any eligible client is participating in or receiving the care and services to be furnished by the Tribe under this Contract. The provisions of this paragraph shall not apply to liabilities, losses, or charges, costs, or expenses caused by the Department.
2. The Tribe agrees that, in order to protect itself as well as the Department under the indemnity agreement provision set forth in the above paragraph, the Tribe will at all times during the terms of this Contract keep in force a liability insurance policy issued by a company authorized to do business in the State of Wisconsin and licensed by the Office of Commissioner of Insurance. Within thirty (30) days of the execution of this Contract, the Tribe shall furnish the Department with written verification of the existence of such insurance. In the event of any action, suit, or proceedings against the Department upon any matter herein indemnified against, the Tribe shall within five (5) working days, cause notice in writing thereof to be given to the Department by certified mail, addressed to its post office address. This condition shall be exercised annually.

B. If self-insured:

1. The Tribe agrees that any loss or expense (including cost and attorney fees) by reason of liability imposed by law by reason of the action or inaction, error, loss, or omission of its agent or agents shall be assumed by the Tribe.

VII. ASSURANCES OF COMPLIANCE

- A. When applicable to the Tribe, the Tribe ensures compliance with Title VI of the Civil Rights Act of 1964 (P. L. 88-342), and all requirements imposed by or pursuant to the regulations of the Department of Health and Human Services (45 CFR Part 80) issued pursuant to that title. To that end, and in accordance with Title VI of that act and the regulations, no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Tribe received federal assistance, or financial assistance from the Department and hereby gives assurance that it will immediately take any measures necessary to effectuate this agreement.
- B. When applicable to the Tribe, the Tribe ensures compliance with Title IX of the Education Amendments of 1972 which state that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any education program or activity for which the Tribe receives or benefits from federal financial assistance.
- C. When applicable to the Tribe, the Tribe shall comply with Section 504, Rehabilitation Act of 1973 which prohibits discrimination on the basis of a physical condition or

handicap and the Age Discrimination Act of 1975 which prohibits discrimination because of age.

- D. When applicable to the Tribe, the Tribe shall ensure the establishment of safeguards to prevent employees, consultants, or members of tribal governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business, or other ties as specified in ss. 946 (10) and 946 (13) Wis. Stats.

VIII. REVIEW, REVISION AND TERMINATION

- A. If the Department and the Tribe disagree about the interpretation of any provision of this Contract, the Tribe shall be entitled to an administrative review of the disputed matter as follows:
 - 1. If the disagreement concerns Contract reconciliation, an audit of the Tribe as described in Section V. of this Contract, the audit resolution process, or any federal audit of the Tribe or the Departments, the review shall be conducted pursuant to the procedures described in the Audit Resolution Policy in effect for this Contract.
 - 2. If the disagreement concerns any other matter under this Contract, the Tribe shall be entitled to an administrative hearing, to the extent provided, under Chapter 227 of the Wisconsin Statutes to review the matter. The Division of Hearings and Appeals shall schedule such hearing within sixty (60) days, including weekends and holidays. At the hearing, the Tribe and Department shall present evidence, testimony, and argument on the issues. Both the Tribe and the Department shall be entitled to a thirty (30) day continuance upon written notification to the other party and the Division of Hearings and Appeals.
 - 3. Either party may ask the Secretary of the Department to review the proposed decision within thirty (30) days of the issuance of the proposed decision. If neither party makes such a request within the thirty (30) days, the proposed decision shall be final. If either party makes such a request within thirty (30) days, the Secretary may allow both parties to file written arguments before a final decision is issued.
- B. If the Department determine that funds authorized for provision of a service or other purpose have not been timely encumbered for that service or purpose, upon notice from the Department to the Tribe, those funds shall be returned to the Department. Upon a request from the Tribe, the Department will negotiate the decision to return funds prior to that action taking place.
- C. Either party may notify the other of conditions, which require re-negotiation of this Contract, such notice to include a detailed statement of the condition requiring re-negotiation. The other party agrees to discuss the contents of the statement as notified and bargain in good faith as to resolution of the conditions to the extent the party is capable of granting the relief requested.

- D. The Tribe shall notify the Contract Administrator in writing whenever it is unable to fulfill its contractual obligations. Upon such notification, the Department shall determine whether such inability will require revision or cancellation of this Contract, or any part thereof.
- E. This Contract can be terminated by a thirty (30) day written notice by either party. Notice to the Department shall be served upon the Contract Administrator stating the reasons for termination. Notice to the Tribe shall be served upon the presiding chairperson of the tribal governing body, stating the reasons for termination. Upon termination, the Department's liability shall be limited to the costs incurred to the date of termination.
- F. If the Department finds it necessary to terminate this Contract prior to the stated expiration date for a reason(s) other than nonperformance by the Tribe, actual costs incurred by the Tribe may be reimbursed for an amount determined by mutual agreement of both parties. The Department shall determine whether such inability will require revision or cancellation of this Contract.

IX. CONDITIONS OF THE PARTIES OBLIGATIONS

- A. This Contract is contingent upon authorization of Wisconsin and United States law, and any material amendment or repeal of the same affecting relevant funding or authority of the Department shall serve to revise or terminate this Contract, except as further agreed to by the parties hereto.
- B. This Contract shall be binding on the tribal governing body, its successors and assignees, the Tribe, and the Department.
- C. The Department and the Tribe understand and agree that no clause, term or condition of this Contract shall be construed to supersede the lawful powers or duties of either party.
- D. Nothing in this Contract shall be construed to require the expenditure of tribal funds except as specifically provided herein and authorized by the governing body of the Tribe.
- E. Nothing implied or expressed in this Contract shall obligate the Department or the Tribe to assume any funding obligation for any current or future special grant received by the Tribe under this Contract after the expiration of such grant.
- F. This Contract is subject to the terms of s. 46.036, Wis. Stats.
- G. It is understood and agreed that the entire Contract between the parties is contained herein, and includes addenda incorporated herein by reference. This Contract supersedes all oral agreements and negotiations between the parties relating to the subject matter thereof.
- H. This Contract becomes null and void if the time between the earlier dated signature and the later dated signature exceeds sixty (60) days.

IN WITNESS WHEREOF, the parties hereto have caused this State and Tribe Contract for the Department of Health Services programs to be executed by their respective representatives.

Authorized Representative of the Tribe

Date

Authorized Representative of the Department
Dennis G. Smith, Secretary
Department of Health Services

Date