

Attachment 2 to Contract No. HHSI285-2023-0006**Annual Funding Agreement Between the Secretary of the Department of Health and Human Services and the Nansemond Indian Nation**

Section 1. Authority and Purpose. This Annual Funding Agreement (hereinafter “AFA” or “Agreement”) is entered into by the Awarding Official of the Department of Health and Human Services (hereinafter “DHHS”), Indian Health Services Nashville Area Office (hereinafter “IHS”), collectively the “DHHS-IHS”; and Nansemond Indian Nation (hereinafter “Contractor” or “Tribe”), collectively hereinafter the “Parties”, pursuant to Title I of the Indian Self-Determination and Education Assistance Act (hereinafter “Act”), Public Law 93-638, as amended, 25 U.S.C. § 5301 *et seq.*, and Contract HHSI285-2023-0006 (hereinafter the “Contract”). Pursuant to the terms of this Agreement, the Contractor is authorized to plan, conduct, operate, and administer the programs, functions, services and activities (“PFSAs”) identified in the Scope of Work (“SOW”), attached hereto as Exhibit A to this AFA. All terms of this Agreement shall be governed by the Act, its implementing regulations, and to the extent expressly agreed to by the parties hereto, applicable IHS policies. To the extent that any term in this Agreement may be construed as being inconsistent with the Act or as exceeding the authority granted by the Act, the provisions of the Act shall govern.

The purpose of this AFA is to establish Fiscal Year 2025 funding levels consistent with section 106(a)(1) and 106(a)(2) of the Act, 25 U.S.C. § 5325(a)(1) and (2), establish a method of payment, identify specific PFSAs to be performed; and to specify the terms and conditions under which the Contractor will operate the PFSAs; and other provisions as the Parties agree in writing, if any, and as provided herein.

Section 2. Effective Date. This AFA shall become effective on October 1, 2024, and shall extend through September 30, 2025.

Section 3. Programs, Functions, Services, Activities (PFSAs) and Funding. The Contractor will administer, provide and be responsible for the PFSAs identified in Exhibit A to this Annual Funding Agreement with the funds provided under this Agreement, as identified in Exhibit B, in accordance with the Contract and this Agreement. The Contractor reserves the right to re-budget funds among the PFSAs provided under the AFA without IHS approval, provided that such re-budgeting would not have an adverse effect on the performance of the Contract to the extent authorized by 25 U.S.C. § 5325(o). The determination of the priority and amounts of funds to be utilized for each PFSA shall be the responsibility of the Contractor except as limited by law, or as otherwise contained in this Agreement.

Section 4. Persons to whom services will be provided. The Contractor will provide health care services to its enrolled members, and other IHS eligible beneficiaries, in accordance with the Act, 25 U.S.C. § 1680c, 25 C.F.R. Part 900, 42 C.F.R. Part 136, and any other applicable law or regulation. The Tribe may also provide health care services to ineligible persons in accordance with 25 U.S.C. §1680c(c)(2), and Resolution No: 2022-11-08-01.

Section 5. Background Checks. The Contractor shall: (1) verify that all health care providers are appropriately licensed and credentialed; and (2) conduct background check(s) and fingerprinting of employees, contractors, and patient care providers as required by applicable law (including but not limited to 25 U.S.C. §§ 3207 and 1647a(b); 42 C.F.R. §§ 136.401 to 136.418) and in accordance with the policies and procedures of Contractor.

Section 6. Program Redesign. As authorized under section 105(j) of the Act, 25 U.S.C. § 5324(j), the Contractor shall have the option to propose a redesign of a PFSA under this AFA, including non-statutory program standards, in a manner so as to best meet the local geographic, demographic, economic, cultural, health, and institutional needs of the Contractor.

Section 7. Amount of Funds.

The total amount of funds associated with the programs, functions, services and activities to be provided from the effective date of this contract through September 30, 2025, pursuant to the Contractor's ISDEAA Contract, and which the Secretary or an authorized representative shall make available to the Contractor as provided in the Contract, shall be determined as provided in this Agreement.

(A) Section 106(a)(1) amount: Pursuant to 25 U.S.C. § 5325, the total amount of Secretarial funding being provided to the Contractor for Fiscal Year ("FY") 2025 AFA for IHS PFSAs assumed in whole, or part, by means of the Contract and this AFA, is \$301,160. Additional amounts, such as for non-recurring funds, may be made available through appropriate modifications to this AFA.

(B) Contract Support Costs ("CSC"): Contract support costs (CSC) will be paid in accordance with 25 U.S.C. § 5325. The parties agree that, according to the best data available as of the date of execution of this agreement, the amount to be paid for FY 2025, which represents the parties' estimate of the Contractor's full CSC requirement pursuant to 25 U.S.C. § 5325, is \$0, including \$0 for direct CSC and \$0 for indirect type CSC. This estimate shall be recalculated as necessary as additional data becomes available including information regarding the direct cost base, pass throughs and exclusions, and the indirect cost rates to reflect the full CSC required under 25 U.S.C. § 5325, and to the extent not inconsistent with the ISDEAA, as specified in IHM Part 6, Chapter 3. The parties will cooperate in updating the relevant data to make any agreed upon adjustments. In the event the parties disagree on the CSC amounts estimated and paid pursuant to this paragraph and the Tribe's full CSC requirement under the ISDEAA,

the parties may pursue any remedies available to them under the ISDEAA, the Contract, and the Contract Disputes Act, 41 U.S.C. §7101 et seq.

(C) Competitive, Formula and Other Funds. Funds for PFSAAs assumed by the Contractor under this Agreement that are not included in Exhibit A, and which are available to the Nashville Area IHS, or other tribes and tribal organizations, on a competitive, formula or other basis, including non-recurring funding, shall be determined based on the relevant calculation. These funds shall be available and paid to the Contractor on the same basis as such funds are available to other tribes and tribal organizations. This does not include grant awards which will remain subject to the terms and conditions set forth in the grant award instrument. Whenever there are errors in calculations or other mistakes regarding estimates of available funding which may need to be renegotiated, both Parties agree to take prompt action as necessary to correct such errors.

(D) Adjustments and Increases: To the extent applicable, the Contractor shall be eligible for funding for new services, service increases, inflation increases, and general increases on the same basis as other Nashville Area IHS contracting and compacting tribes and tribal organizations.

Section 8. Method of Payment.

The Secretary shall provide the Contractor, payment in lump sum(s) at the beginning of the Fiscal Year or upon execution of this Agreement, in accordance with subsection (b)6 of the Contract, titled "Payment".

Specifically, except as otherwise provided in this Agreement and subject to the availability of appropriations, the IHS shall provide all **\$301,160** recurring funding due under this Agreement in one lump sum payment; due within twenty (20) calendar days of the allotment to the Nashville Area Office ("NAO") of such funds, or within ten (10) calendar days of the effective date of this Agreement, whichever is later. In the event of a Continuing Resolution, IHS will pay the Contractor its proportionate share of such funds received within twenty (20) calendar days of the allotment to the NAO. Competitive, formula, and other funds that require further calculation shall be paid within ten (10) calendar days of the date on which the Area Director reaches a final allocation decision following tribal consultation, or within ten (10) calendar days of the effective date of this Agreement, whichever is later. Within twenty (20) calendar days of receipt of the advice to the Area of adjustments to the **\$301,160** base, the amounts in this Agreement will be adjusted and any increases promptly paid to the Contractors in an advance lump sum payment. IHS shall pay to the Contractor any interest that may be due under the Prompt Payment Act (31 U.S.C. § 3901 et seq.) for late payments under this Agreement.

Section 9. Federal Supply Sources. As provided in section 105(k) of the Act; 25 U.S.C. §5324(k), the Contractor shall have access to federal sources of supply including lodging providers, airlines, and other transportation providers; and shall have such authority to fully utilize the services offered

by the General Services Administration (GSA) as it relates to procurement of goods and services, and leasing of GSA motor vehicles; and excess and surplus programs, on the same basis as the Secretary.

Section 10. Third Party Reimbursements and Election to Directly Bill. Pursuant to 25 U.S.C. § 1621e(e)(3)(A), the Contractor has the right and has elected to recover reimbursement and directly bill certain third parties under the Federal Medical Care Recovery Act, 42 U.S.C. §§ 2651 and 2653 for health services provided by Tribe, and to retain and expend such recoveries for any purpose otherwise permitted in this AFA, or otherwise in accordance with sections 207 and 401 of the Indian Health Care Improvement Act, 25 U.S.C. §§1621f and 1641t. The Contractor has elected to directly bill Medicaid, Medicare and CHIP pursuant to Section 401(d) of the Indian Health Care Improvement Act, 25 U.S.C. 1641(d). IHS shall not impose any offset or limit on the funds otherwise due to the Contractor under its Contract or this or any other Annual Funding Agreement based on those reimbursements.

Section 11. Reports.

Pursuant to the Single Audit Act, as amended, 31 U.S.C. §§ 7501–7506, and the Act, 25 U.S.C. § 5305(f)(1), and 45 C.F.R. Part 75, the Contractor shall provide to the Federal Audit Clearinghouse and National External Audit Review (or their successors), its annual Single Agency Audit Report (formerly known as A-133 Audit). The Contractor shall provide such other reports as agreed upon by the parties from time to time. A SF-425 – Federal Financial Report shall be submitted within thirty (30) days after the close of each fiscal quarter, except for the fourth quarter, which will be submitted to IHS within ninety (90) days after the close of the federal fiscal year. A brief annual narrative report will be submitted within ninety (90) days after the end of the federal fiscal year. 25 U.S.C. § 5305(f)(2), 25 C.F.R. § 900.65.

Section 12. Records.

The records generated and maintained by the Contractor shall not be treated as federal records under Chapter 5 of Title 5 of the United States Code, except that:

- A. Patient Records Disclosure:** Patient medical records may be disclosed only in accordance with the applicable provisions of the Health Insurance Portability and Accountability Act (“HIPAA”) Privacy Rule, 45 C.F.R. Parts 160 and 164, 42 C.F.R. Part 2 regulations, SAMSHA Subpart 2 regulations, and the American Recovery and Reinvestment Act of 2009; and
- B. Patient Records Storage:** Pursuant to Section 25 U.S.C. § 5324(o) of the Act, the patient records generated by the Contractor shall, at the option of the Contractor, be deemed to be medical records for the limited purpose of making such records eligible for storage by Federal Records Centers to the same extent and in the same manner as other Department of Health and Human Services patient records. The Contractor will bear the costs associated with maintenance and storage of patient records and contract records.

Maintenance of Records: Pursuant to 25 U.S.C. § 5305 of the ISDEAA, each recipient of federal financial assistance shall keep such records as the appropriate Secretary shall prescribe by regulation promulgated under sections 552 and 553 of title 5, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other information as will facilitate an effective audit. These records shall consist of quarterly financial statements for the purpose of accounting for Federal funds, the annual single- agency audit required by chapter 31 U.S.C. § 75 and a brief annual program report

Section 13. Supplemental Provisions.

- A. Licensing.** The Tribe's licensed health professionals will be licensed in accordance with 25 U.S.C. § 1621t.
- B. Licensing Fees.** Employees of the Tribe's healthcare system engaged in carrying out any PFSA identified in *Exhibit A – Scope of Work*, which is incorporated in this AFA, shall be exempt from payment of licensing, registration, and any other fees imposed by a federal agency to the same extent that employees of the Indian Health Service are exempt from such fees.
- C. Interest.** Pursuant to 25 U.S.C. § 5324(b), the Tribe shall not be held accountable for interest earned on funds, pending their disbursement by the Tribe.
- D. Technical Assistance.** Pursuant to 25 U.S.C. § 5322(d), the Secretary is directed, upon the request of the Tribe and subject to the availability of appropriations, to provide technical assistance to the Tribe on a non-reimbursable basis.
- E. Redesign.** Pursuant to 25 U.S.C. § 5324(j), upon providing notice to the Secretary, the Tribe that carries out a Nonconstruction self-determination contract may propose a redesign of a program, activity, function or service carried out by the Tribe under the contract, including any nonstatutory program standard, in such manner as to best meet the local geographic, demographic, economic, cultural, health and institutional needs of the Indian people and tribes served under the contract. The Secretary shall evaluate any proposal to redesign any program, activity, function or service provided under the contract. With respect to declining to approve a redesigned program, activity, function or service under subsection 5324(j), the Secretary shall apply the criteria and procedures set forth in 25 U.S.C. § 5321.

Section 14. Modifications. Pursuant to section 110(b) of the Act; 25 U.S.C. §5331(b), the DHHS-IHS is prohibited from revising or amending the Contract and this AFA without the Contractor's expressed written consent.

- A. Any modification to the Contract and this AFA shall be in the form of a written modification and shall require the signatures of the duly authorized representatives of the Contractor and the DHHS-IHS Awarding Official.
- B. Any proposed modifications to the Contract and this AFA shall be affected in accordance with section 102(a)(2) of the Act; 25 U.S.C. §5321(a)(2).
- C. **Modification to Add Additional Programs:** The Contractor reserves the right to identify other PFSAs that it wishes to include in this Agreement by modification during the term of this Agreement. If the Contractor's proposal(s) to include additional PFSAs is approved by IHS, this Agreement will be modified to include such PFSAs.
- D. **Modifications to Add Additional Available Funding:** To the extent applicable, the Contractor shall be eligible for funding for new services, service increases, inflation increases, and general increases on the same basis as other ISDEAA Contractors. IHS shall make any additional payment to the Tribe for which it meets the eligibility criteria based on the applicable methodology for, other funded but undistributed funds, and program formula funds (e.g., dental and medical equipment, , Permanent Change of Station ("PCS")), for covered Federal and tribal personnel, Emergency Funds, end-of-year distributions, facilities maintenance and improvement, and equipment replacement and other decisions regarding payment of those funds have been made by the IHS.

Section 15. Additional Funding. Written consent of the Contractor shall not be required for issuing modifications which result from increases in actual appropriation levels or which represent an increase in funding for PFSAs identified in this AFA

Section 16. Non-Recurring Funds. Non-recurring funds are funds that are transferred to the Contractor on a one-time basis. These funds are designated as "non-recurring"/or "NR" on Exhibit A. Pursuant to Section 16 of this AFA, non-recurring funds may be added unilaterally by IHS. The parties agree that these non-recurring funds are not part of the recurring amount required by 25 U.S.C. § 5325, but depending on the type of funding, they may be eligible for contract support costs. To the extent they may be viewed as required by 25 U.S.C. § 5325, the Tribe agrees that any additional non-recurring funds paid pursuant to section 15 may be reduced in the subsequent year.

Section 17. Federal Tort Claims Act. Pursuant to 25 U.S.C. § 5321(d), the Tribe is deemed to be part of the Public Health Service in the Department of Health and Human Services and its employees (including individuals performing personal services contracts with the Tribe to provide health care services) are deemed to be employees of the Federal government while performing

work under this AFA for purposes of the Federal Tort Claims Act (“FTCA”), 28 U.S.C. § 1346(b) and Chapter 171 of Title 28 of the U.S. Code, for any acts or omissions that occur in the course of providing services to eligible Indian beneficiaries as well as those persons deemed to be eligible for IHS services pursuant to IHCA sections 813(a) and (b), 25 U.S.C. § 1680c(a) and (b), whether FTCA applies in any particular case is initially decided on an individual case-by-case basis by the United States Department of Justice and subsequently by the Federal Courts.

Section 19. Purchased and Referred Care. The Contractor specifically opts in to the Limitation on Charges for Health Care Professional Services and Non-Hospital Based Care in 42 C.F.R. Part 136, Subpart I.

Section 20. Merger Clause. This agreement represents the entirety of the parties’ understanding as to its subject matter. To the extent that the Contractor has previously made any other ISDEAA requests or proposals pursuant to 25 U.S.C. § 5321, related to its FY 2025 ISDEAA agreement, the Contractor affirmatively withdraws such requests and proposals by and through this writing, including any requests or proposals for additional funding or for different language not included herein.

NANSEMOND INDIAN NATION

DHHS - INDIAN HEALTH SERVICE

By: Keith Anderson, Chief

By: Kirk G. Meyer, Health Systems Specialist

Date

Date: