

## INTERGOVERNMENTAL AGREEMENT (Agreement # BH16-0021)

This Intergovernmental Agreement ("Agreement") is entered into by and between the Navajo Nation, a federally-recognized Indian Tribe, and the Arizona Health Care Cost Containment System ("AHCCCS"), the agency of the State of Arizona authorized to administer the Medicaid and behavioral health systems in the State of Arizona.

**Project Title: Navajo Nation Care Coordination**

**Term of Agreement:** The term of the Agreement is from July 1, 2016 through June 30, 2021 unless otherwise terminated or extended by mutual agreement of the Parties in a duly authorized and executed amendment.

### RECITALS

WHEREAS, AHCCCS has authority to contract for services specified herein in accordance A.R.S. Title 36, Chapters 29 and 34, and A.R.S. §§ 11-951 and 11-952; and

WHEREAS, the Navajo Nation has the authority to contract for the performance of the services provided herein pursuant to 2 N.N.C. §§ 164,222 and 223 and the laws, rules and sovereign authority of the Navajo Nation;

NOW, THEREFORE, the NAVAJO NATION and AHCCCS (collectively, the "Parties" or individually, a "Party"), pursuant to the above and in consideration of the matters set forth herein, do mutually agree to the provisions of this Intergovernmental Agreement.

**The Navajo Nation**

Signature: \_\_\_\_\_



Printed Name: **Russell Begaye**

Title: **Navajo Nation President**

Date: \_\_\_\_\_

6/14/2016

**AHCCCS:**

Signature: \_\_\_\_\_



Printed Name: **Meggan Harley, CPPO, MSW**

Title: **Procurement and Contracts Manager**

Date: \_\_\_\_\_

6/20/2016

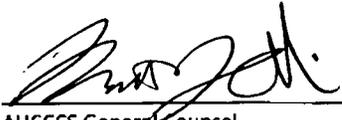
In accordance with 2 N.N.C. §§ 164, 22 and 223, this Agreement has been reviewed by the undersigned Tribal Government Attorney who has determined that this Agreement is in the appropriate form and is within the power and authority granted under the laws of the Navajo Nation and the applicable laws of Arizona.

 5-26-14  
Legal Counsel date

**Ethel B. Branch**  
Printed Name

**Navajo Nation Attorney General**  
Title

In accordance with A.R.S. § 11-952, this Agreement has been reviewed by the undersigned General Counsel of the agency, who has determined that the Agreement is in the proper form and is within the powers granted under the laws of the State of Arizona to AHCCCS.

 June 16, 2016  
AHCCCS General Counsel date

**Matthew Devlin**  
Printed Name

**AHCCCS General Counsel**  
Title

## I. SCOPE OF WORK

### A. ELIGIBILITY FOR SERVICES UNDER THIS AGREEMENT

1. The Navajo Nation shall verify the Title XIX or Title XXI eligibility of persons referred for or requesting behavioral health services in accordance with the requirements of the Navajo Nation Department of Behavioral Health Services Policy and Procedures Manual, and the AHCCCS Eligibility Policy Manual.
2. **Enrollment and Disenrollment.**
  - 2.1 Persons who are affiliated with the Navajo Nation by virtue of being Federally-recognized Tribal members, who live on or near the Navajo Nation, who receive their primary health care at facilities on or near the Navajo Nation, and who are assessed as needing covered behavioral health services shall be enrolled with the Navajo Nation to receive AHCCCS-covered behavioral health services.
  - 2.2 Persons affiliated with the Navajo Nation by virtue of marriage to a Federally-recognized Tribal member, or employment or residence on or near the exterior boundaries of the Navajo Nation, and who are assessed as needing covered behavioral health services, may be voluntarily enrolled with the Navajo Nation to receive AHCCCS-covered behavioral health services, and shall sign appropriate consent to treatment forms.
  - 2.3 The Navajo Nation shall, in accordance with the Navajo Nation Department of Behavioral Health Services Policy and Procedures Manual and the AHCCCS Eligibility Policy Manual, enroll all eligible persons who receive covered behavioral health services in the AHCCCS Client Information System within 14 days of the date the first covered behavioral health service is delivered.
  - 2.4 The Navajo Nation shall dis-enroll enrolled persons in accordance with the Navajo Nation Department of Behavioral Health Services Policy and Procedures Manual, and when an enrolled person no longer qualifies for AHCCCS-funded behavioral health services.

### B. SERVICE DELIVERY

1. **Case Management:** The Navajo Nation shall provide administrative case management services consisting of the following:
  - 1.1 Arranging for and ensuring an initial assessment of the referred person within seven (7) days of the date the person was referred.
  - 1.2 Arranging for and ensuring ongoing covered behavioral health services to be provided within twenty-three (23) calendar days of the initial assessment date. If the Navajo Nation is able to engage 75% of individuals in need of behavioral health services within 10 calendar days of the individuals completed assessment, the Navajo Nation shall receive an incentive payment. This data will be verified via the Client Information System by AHCCCS DHCM at the end of the state fiscal year.

- 1.3 At the discretion of the enrolled person or the enrolled person's legal guardian, working in collaboration with the enrolled person and his/her family or significant others to develop, implement, review and revise an effective service plan.
- 1.4 Overseeing the provision of covered behavioral health services as identified on the service plan including continuous evaluation of the effectiveness of the services and suitability of any placement through ongoing assessment of the enrolled person, input from the enrolled person and other persons involved in the enrolled person's care, and direct observation and analysis of the services rendered by any provider to which the Navajo Nation has referred the enrolled person.
- 1.5 Serving as the point of contact for coordination and communication with other systems including where clinical knowledge of the case is important.
- 1.6 Referring the enrolled person to resources including traditional or faith-based services, and medical services as clinically indicated, including emergency medical services.
- 1.7 Arranging for covered behavioral health crisis services.
- 1.8 Developing service plans that maximize personal and family voice and choice, as determined by the enrolled person.
- 1.9 Applying the same standard of care for all enrolled persons, regardless of the person's eligibility category.
- 1.10 Facilitating decision making regarding the enrolled person's behavioral health care including:
  - 1.10.1 Arranging for assessments and treatment recommendations to be completed in collaboration with the enrolled person, his/her family and with clinical input from a clinician who is either a behavioral health professional or a behavioral health technician (case management specialists) working under the supervision of a behavioral health professional.
  - 1.10.2 Continuously engaging the enrolled person, family and significant others in meeting the behavioral health needs of the enrolled person, including active participation in decision-making as appropriate in meeting the behavioral health needs.
  - 1.10.3 Developing and implementing transition, discharge or aftercare plans prior to discontinuation of case management services.
  - 1.10.4 Ensuring complete, accurate and timely entry of enrollment/disenrollment data into the AHCCCS Client Information System and claims data into the AHCCCS PMMIS.
- 1.11 AHCCCS, or its designee, will provide notification to the Behavioral Health Director (Clinical Director) of the Navajo Nation Department of Behavioral Health Services, or his or her designee, of when enrolled persons are received at Emergency Departments and/or inpatient for behavioral health services, so that the Navajo Nation can take appropriate action.
- 1.12 Ensuring complete, accurate and timely documentation of case management notes provided by the Navajo Nation in accordance with AHCCCS policy including those functions listed above.

- 1.13 The Navajo Nation key personnel and staff, as specified in this agreement, shall be available by phone, email or other electronic means during the Navajo Nation's business hours. No later than January 1 of each calendar year, the Navajo Nation shall provide AHCCCS-DFSM with a copy of the Navajo Nation Holiday Calendar that will be in effect for that calendar year.

## **2. Care Coordination and Collaboration**

Care coordination encompasses a variety of activities for coordinating services and providers to assist a member in achieving his or her recovery goals. These activities which can occur both at a clinical and system level, and are performed by treatment team members depending on a member's needs, goals, and functional status. Regardless of who performs care coordination, the Navajo Nation agrees to engage in activities that support member advocacy, help navigate complex systems and communicate with a wide spectrum of professionals (physicians, specialists and other health care professionals) and non-professionals including family members.

The Navajo Nation shall conduct care coordination activities which at a minimum shall include, as appropriate, the following activities:

- 2.1 Coordinate care and services to assure continuity of care:
  - 2.1.1 Between inpatient and outpatient settings;
  - 2.1.2 Between physical and behavioral health services;
  - 2.1.3 In accordance with the AHCCCS Medical Policy Manual, Policy 1620-J, for children under the age of 21 who are enrolled in Medicaid, who are placed out-of-area or out-of-state; and
  - 2.1.4 Among other individuals or entities involved in the delivery of services for enrolled members.
- 2.2 Communicate with the member's assigned care manager, treatment team or other service providers to ensure management of care and services including addressing and resolving complex, difficult care situations.
- 2.3 When transitioning an enrolled person to a Regional Behavioral Health Authority ("RBHA") or other health plan, provide to the receiving health plan any information related to any special needs of transitioning members in accordance with AHCCCS ACOM Policy 420.
- 2.4 Coordinate referrals and outreach to members who would benefit from behavioral health services, but do not have an open episode of care.
- 2.5 Coordinate with the Arizona Department of Economic Security/ Division of Developmental Disabilities ("ADES/DDD") by:
  - 2.5.1 Working in collaboration with ADES/DDD staff and service providers involved with the enrolled person;
  - 2.5.2 Providing assistance to providers in managing difficult behaviors;
  - 2.5.3 Inviting ADES/DDD staff to participate in the development of the behavioral health services plan and all subsequent planning meetings as members of the clinical team; and
  - 2.5.4 Exchanging information regarding the initial assessment, and Individual or Family Support plan (ISP).

2.6 The Navajo Nation shall participate in care coordination meetings on a monthly basis with the AIHP, RBHA, IHS facilities, tribally owned and/or operated 638 facilities, and other providers that serve members assigned to the Navajo Nation in order to address issues related to clinically complex, (high needs/high cost) enrolled persons, crisis and other service delivery issues. The Navajo Nation may also identify high need/high cost members for inclusion.

2.7 Implement health information exchange strategies to actively engage in secure data sharing efforts with both physical and behavioral health providers for the purposes of care coordination for shared members.

### **3. Services for Enrolled Persons with a Serious Mental Illness (“SMI”)**

#### **3.1 SMI Determinations**

3.1.1 A critical component of the service delivery system is the effective and efficient identification of persons who have special behavioral health needs due to the severity of their behavioral health disorder(s). One such group is persons with a SMI. Without receipt of appropriate care, these persons are at high risk for further deterioration of their physical and mental condition, increased hospitalizations and potential homelessness and incarceration.

3.1.2 The Crisis Response Network (“CRN”) will perform the SMI eligibility determination process for all persons assigned to the Navajo Nation. CRN will outreach to Indian Health Services and tribally owned and/or operated facilities to provide technical assistance on the assessment and determination process.

3.1.3 AHCCCS will ensure that the Navajo Nation receives clinical information for any enrolled person who goes through the SMI determination process outside of the Navajo Nation.

#### **3.2 Special Assistance for Enrolled Persons with a SMI**

3.2.1 The Navajo Nation shall require its staff to identify all persons in need of Special Assistance to the AHCCCS Division of Health Care Advocacy and Advancement and ensure those persons are provided the Special Assistance required by and consistent with the requirements in the AHCCCS Medical Policy Manual, Policy 320-R on *Special Assistance for Persons Determined to have a Serious Mental Illness*.

3.2.2 The Navajo Nation shall ensure that its staff has the necessary skill and knowledge to identify and refer all persons in need of Special Assistance as described in 3.2.1 above.

3.2.3 The Navajo Nation shall submit to the AHCCCS-DFSM any reports and other deliverables related to Special Assistance as detailed in the AHCCCS Medical Policy Manual, Policy 320-R.

3.3 The Navajo Nation shall coordinate care for enrolled persons with a SMI as described in Section B.2 of this Agreement, and shall make referrals to appropriate community and social support services.

#### **3.4 Residential Placements and/or Independent Housing**

- 3.4.1 At AHCCCS' discretion and in collaboration with the Navajo Nation, the Navajo Nation may develop housing services for enrolled persons with a SMI based upon availability of funding and the identified need of the enrolled person.
- 3.4.2 If funding is allocated to the Navajo Nation, the Navajo Nation shall not utilize state funding sources in any capacity at unlicensed boarding homes, or other similar unlicensed facilities.

#### **4. Enrolled Person Grievances and Appeals**

- 4.1 The Navajo Nation shall assist the enrolled person to exercise his/her rights to file any grievances or appeals to which the enrolled person may be entitled, including the utilization of the SMI grievance and appeal process.
- 4.2 The Navajo Nation shall endeavor to informally resolve grievances involving enrolled persons whenever possible; however, the Navajo Nation shall not prohibit or interfere with an enrolled person's or provider's right to file a grievance or appeal with AHCCCS, or use the grievance and appeal processes.

#### **5. Crisis Services- General requirements**

The Navajo Nation shall:

- 5.1 Provide solution-focused and recovery-oriented interventions designed to avoid unnecessary hospitalization, incarceration, or placement in a more segregated setting.
- 5.2 Coordinate with all clinics on or near the Navajo Nation and case management agencies to resolve crisis situations for enrolled members.
- 5.3 Develop a process where appropriate clinical staff coordinate crisis services on or near the Navajo Nation with the local crisis providers and/or law enforcement.
- 5.4 Participate in a data and information sharing system, connecting through a health information exchange.
- 5.5 Analyze, track, and trend crisis service utilization data provided by AHCCCS in order to improve crisis services.
- 5.6 In conformance with the Scope of Work, Care Coordination and Collaboration Section, provide information about crisis services and develop and/or maintain collaborative relationships with community partners including fire and police departments, emergency medical services, hospital emergency departments, AHCCCS DFSM, and other providers of public health and safety services.
- 5.7 Have active involvement with local police and fire departments, and first responders in the development of strategies for crisis service care coordination and strategies to assess and improve crisis response services
- 5.8 Develop a collaborative process to ensure information sharing for timely access to Court Ordered Evaluation (COE) services

5.9 In compliance with any relevant laws, rules or regulations of the Navajo Nation, develop and/or maintain policies that outline the Navajo Nation's role and responsibility related to the treatment of individuals who are unable or unwilling to consent to treatment. The policy must be submitted for review and approval by AHCCCS-DFSM. The policy must address:

- 5.9.1 Involuntary evaluation/petitioning;
- 5.9.2 Court ordered process, including tracking the status of court orders;
- 5.9.3 Execution of court order; and
- 5.9.4 Judicial review.

5.10 Develop and maintain a collaborative process with the counties to ensure coordination of care and information sharing for timely access to court ordered evaluation services and treatment. Reimbursement for court ordered screening and evaluation services (Court ordered treatment) are the responsibility of the county pursuant to A.R.S. § 36-545.

5.11 Coordinate with the assigned RBHA, TRBHA, or other health plan to ensure coordination of care and information sharing for enrolled persons who transfer to a RBHA, TRBHA, or other health plan due to an encounter with the public crisis system.

5.12 Update the information management system to reflect all transfers between the Navajo Nation and RBHAs, TRBHAs or other health plans.

## **6. Prevention Services:**

6.1 AHCCCS administers behavioral health services funded through federal block grants from the Substance Abuse and Mental Health Services Administration ("SAMHSA"). These federal block grants consist of the Substance Abuse Block Grant ("SABG") and the Mental Health Block Grant ("MHBG")

6.2 Subject to the availability of funds and approval of an annual prevention plan by AHCCCS-DFSM, the Navajo Nation shall develop and implement primary prevention services. Prevention services shall be made available for individuals and communities to reduce the risk of development or emergence of behavioral health disorders and to improve overall behavioral health status in targeted families and communities.

6.3 AHCCCS and the Navajo Nation will continue to negotiate in good faith to amend the Agreement to reflect the funding, development and implementation of Prevention Services.

## 7. General Provisions

- 7.1 The Navajo Nation must, to the extent possible and appropriate, allow enrolled persons to choose their behavioral health provider(s).
- 7.2 Eligible members of federally-recognized Native American Tribes may choose to enroll with the Navajo Nation or a RBHA.
- 7.3 The Navajo Nation shall be accessible by toll free phone number for general information requests from enrolled persons during Navajo Nation business hours.
- 7.4 Enrolled Person Communications
  - 7.4.1 The Navajo Nation shall provide interpreters of any language, free of charge, to an enrolled person, to ensure appropriate delivery of services. The Navajo Nation shall provide enrolled persons with information instructing them how to access interpreter services and shall arrange for interpreter services.
  - 7.4.2 AHCCCS shall provide a Member Handbook template to the Navajo Nation. The Navajo Nation shall insert information into the Member Handbook template that details information specific to the Navajo Nation's operations. The Navajo Nation shall distribute the Member Handbook to each enrolled person within twelve (12) business days of the enrolled person receiving a first service.
  - 7.4.3 AHCCCS Member Handbook must be made available to all enrolled persons on an annual basis. Notification on the availability of the updated Member Handbook must be provided to enrolled persons.

## C. OFFICE OPERATIONS

### 1. Key Personnel Requirements

- 1.1. The Navajo Nation must have a sufficient number of personnel who are capable of and devoted to the successful accomplishment of work to be performed under this Agreement.
- 1.2. **Key Personnel:** the Navajo Nation shall assign specific individuals to following key positions:
  - 1.2.1 *Health Services Administrator*, Navajo Department of Behavioral Health, has ultimate responsibility to oversee the management of, and adherence to, requirements set forth in this Agreement.
  - 1.2.2 *Behavioral Health Director*, or Clinical Director, is responsible for clinical program development and oversight of personnel and services to enrolled persons.
  - 1.2.3 *Clinical Specialist* must meet the qualifications of a Behavioral Health Professional as defined in the Arizona Administrative Code and is responsible for overseeing case management and care coordination functions.
  - 1.2.4 *Information Systems Administrator*, who is responsible for oversight of the management information systems required by this Agreement.
- 1.3. The Navajo Nation agrees that, once assigned to work under this Agreement, Key Personnel listed in 1.2. above shall not be removed or replaced without notice to AHCCCS-DFSM within ten (10) days. If Key Personnel are not available for work under this Agreement for a continuous period exceeding thirty (30) calendar days, or are expected to devote

substantially less effort to the work under this Agreement than initially anticipated, the Navajo Nation shall notify AHCCCS within seven (7) days, and shall, subject to the concurrence of AHCCCS, replace the personnel with other personnel of substantially equal ability and qualifications.

- 1.4. The Navajo Nation shall ensure that all Key Personnel listed in 1.2. above have appropriate training, education, experience, orientation, credentialing, and the appropriate licenses, as applicable, to fulfill the requirements of their positions.

## 2. Staff Requirements

- 2.1 The Navajo Nation shall have a sufficient number of personnel capable of and devoted to the successful accomplishment of work to be performed under this Agreement. The Navajo Nation shall maintain organizational, managerial and administrative systems and staff capable of fulfilling all Agreement requirements including the professional clinical requirements for the supervision of the case management and care coordination services.

- 2.2 The Navajo Nation shall ensure that all staff have appropriate training, education, experience, orientation, licenses and credentialing, as applicable, to fulfill the requirements of their positions.

- 2.3 The Navajo Nation shall have processes to identify the training needs and enhance the knowledge and skills of its qualified personnel, behavioral health recipients, and family members.

- 2.3.1 The Navajo Nation shall provide trainings such as behavioral health system orientation, ongoing education, and technical assistance (e.g. HIPAA, Program Integrity, Grievance and Appeal Standards, Customer Service, Member's Rights, etc.) to support personnel in successfully fulfilling the requirements of their position and the Arizona System Principles, Arizona Children's Vision and Principles, and Guiding Principles for Recovery-Oriented Adult Behavioral Health Services and Systems.

- 2.3.2 Upon request, the Navajo Nation shall provide to AHCCCS-DFSM a list of trainings provided to staff, behavioral health recipients, and family members. The list of trainings shall be supported by documentation of the content of the trainings, the names of educators and the names of attendees.

### 2.4 Required Staff

- 2.4.1 *Care Coordinator (Case Management Specialist)*, shall be located at Flagstaff Medical Center (FMC), who is responsible for coordinating care for members that receive services at FMC.

- 2.4.2 *Care Coordinator (Case Management Specialist)*, shall be responsible for coordinating care for enrolled persons who receive services outside of the Navajo Nation at acute facilities other than Flagstaff Medical Center.

- 2.5 The Navajo Nation shall maintain an *Immediate Jeopardy (IJ) Contact*

- 2.5.1 The IJ Contact shall be responsible for communicating with AHCCCS to coordinate the care of enrolled persons during periods of immediate jeopardy, such as fires or other public emergency situations.
- 2.5.2 The IJ Contact person(s) shall be accessible 24 hours a day, seven days a week to work with AHCCCS and/or other State agencies on urgent issue resolutions.
- 2.5.3 The IJ Contact shall have access to information necessary to identify members who may be at risk, their current health/service status, ability to initiate new placements/services, and to be available to perform status checks at affected facilities and potentially ongoing monitoring, if necessary.
- 2.5.4 The Navajo Nation shall supply AHCCCS with the contact information for the IJ Contact, such as a telephone number, to call in these urgent situations.

### **3. Quality Management and Improvement Program.**

- 3.1 The Navajo Nation shall participate in and cooperate with AHCCCS Quality Management activities, and make records and other documentation available to AHCCCS Quality Management upon request. The Navajo Nation shall participate in Quality Management monitoring, and technical assistance activities.
- 3.2 The Navajo Nation shall report mortalities, incidents and accidents, for enrolled persons in accordance with the AHCCCS Medical Policy Manual, Chapter 960.
- 3.3 The Navajo Nation shall provide clinical supervision, training and technical assistance to its personnel based, in part, on AHCCCS' or the Navajo Nation's monitoring findings and corrective actions.
- 3.4 Behavioral Health Recipient Satisfaction Survey: The Navajo Nation shall actively participate in the development and implementation of an annual Satisfaction Survey. The Navajo Nation shall use findings from this Satisfaction Survey to improve care for enrolled persons.
  - 3.4.1 The Navajo Nation will implement 1) an Adult Member Survey and, 2) a Youth Services Survey for Families.
  - 3.4.2 The Navajo Nation shall send completed surveys to AHCCCS for analysis and reporting of the results.
  - 3.4.3 AHCCCS and the Navajo Nation shall work together to develop Navajo Nation specific surveys.

### **4. Data Submission**

- 4.1 The Navajo Nation shall be responsible for computer terminal hardware and data communication equipment that enable the Navajo Nation to access and submit relevant AHCCCS data in a lawful manner.
- 4.2 At The Navajo Nation's request, AHCCCS will provide technical assistance with regard to the data communication equipment.
- 4.3 The Navajo Nation shall comply with the provisions of the CIS File Layout Specifications Manual, the Navajo Nation Department of Behavioral Health Services Policies and Procedures Manual, and the AHCCCS Technical Interface Guidelines, including provisions for enrollment, disenrollment and demographic data submission.

## II. FINANCIAL PROVISIONS

### A. PAYMENTS TO THE NAVAJO NATION

1. To determine the annual budget for the Navajo Nation , AHCCCS will take into account the number of staff performing work under the Agreement, their salaries, the time spent performing duties, caseload ratios, vehicle costs, Employee Related Expenses (“ERE”), and other indirect costs. The model may be updated yearly as new information becomes available. Based on the annual budget, AHCCCS shall make monthly payments to the Navajo Nation in compliance with A.R.S. Titles 35 and 36. Payments are conditioned upon the rights and obligations of this Agreement and the availability to AHCCCS of funds authorized and appropriated by the State Legislature for expenditure in the manner and for the purposes stated in this Agreement. AHCCCS or the State shall not be liable for any purchase(s) entered into by the Navajo Nation in anticipation of such funding.
2. Payments made by AHCCCS to the Navajo Nation are conditioned upon receipt by AHCCCS of applicable timely, accurate and complete reports, documentation and any other information due from the Navajo Nation, unless prior written approval waiving such requirement(s) is obtained from the AHCCCS Director or designee. If the Navajo Nation is in any matter in default in the performance of any material obligation under the Agreement, including in the process of administrative appeal, arbitration, or if financial, compliance or performance audit exceptions are identified, AHCCCS may, at its sole option and in addition to other available remedies, either adjust the amount of payment or withhold payment until satisfactory resolution of the default or exception. The Navajo Nation shall have the right to 30 days written notice of AHCCCS’ action in adjusting the amount of payment or withholding payment. Under no circumstances shall AHCCCS authorize payments that exceed an amount specified in this Agreement without an approved written amendment to the Agreement. AHCCCS may, at its option, withhold final payment to the Navajo Nation until all final reports and deliverables are received.
3. The practices, procedures and standards specified in and required by the State of Arizona Accounting Manual (<http://www.gao.az.gov/publications/SAAM/>) and any Uniform Financial Reporting Requirements shall be used by the Navajo Nation in the management, recording and reporting of Agreement funds received from AHCCCS and in producing audited financial statements.
4. Funding received through this agreement shall be retained by the Navajo Nation to be used for the sole purpose of providing services required by this Agreement. All funding received under this Agreement must be maintained in a separate fund (account). The Navajo Nation shall provide AHCCCS with a quarterly report detailing all activities in this fund (account). Any funds remaining subsequent to the state’s fiscal year end shall be used in accordance with this Agreement within 90 days. For funds not expended within 90 days after the state’s fiscal year end, the Navajo Nation shall present a plan for AHCCCS’ approval describing its plan to utilize remaining funds within 180 days of the state’s fiscal year end. The following year’s revenue may be adjusted if the Navajo Nation does not provide a reasonable plan to spend remaining funds.
5. The Navajo Nation shall reimburse AHCCCS upon request, or AHCCCS may deduct from future payments to the Navajo Nation, any amounts determined by AHCCCS to represent:
  - 5.1 Costs related to services which have been inaccurately reported;
  - 5.2 Costs related to services that have not been provided;
  - 5.3 Costs of services for which the Navajo Nation’s books, records, and other documents are not sufficient to clearly confirm were used by the Navajo Nation to provide such services;

- 5.4 Costs of services sustained as a financial audit exception; or
- 5.5 Costs of services which have not been provided in accordance with applicable regulations, laws, policies and this Agreement, to include services which AHCCCS has determined to be unnecessary.

- 6. The Tribal Contractor shall submit a Contractor Expenditure Report (“CER”) with supporting documentation for reimbursement of State General Funds for NTXIX Services, Supported Housing, and Crisis. In accordance with A.R.S. § 35-190, State General Funds are appropriated by the State Legislature and must be expended (based on dates of service) by June 30 of each year at both the Navajo Nation and contracted provider levels. Any general funds allocated for housing must be spent in accordance with approved housing plan.
- 7. The Tribal Contractor shall submit a CER with supporting documentation for reimbursement of Housing funds. Funds must be spent in accordance with approved housing plan for Individuals meeting the Seriously Mental Ill designation.
- 8. “State Fiscal Year” means the period beginning with July 1 and ending June 30.

## 9. Costs and Payments

9.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 36.

### 9.2 Applicable Taxes.

- 9.2.1 Payment of Taxes. The Navajo Nation shall be responsible for paying all applicable taxes.
- 9.2.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 9.2.3 Tax Indemnification. Navajo Nation and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Navajo Nation. The Navajo Nation shall, and require all subcontractors to, hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker’s Compensation.
- 9.2.4 IRS W9 Form. In order to receive payment the Navajo Nation shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

9.3 Availability of Funds for the Next State Fiscal Year. Funds may not presently be available for performance under this Agreement beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Agreement beyond the current state fiscal year until funds are made available for performance of this Agreement.

9.4 Availability of Funds for the Current State Fiscal Year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

- 9.4.1 Accept a decrease in price offered by the Navajo Nation; or
- 9.4.2 Cancel the Agreement.

## **B. FINANCIAL REPORTING AND RECONCILIATION**

1. The Navajo Nation shall have a system to produce complete, timely, reliable and accurate financial records in accordance with the following requirements for financial reporting:
  - 1.1 The Navajo Nation shall design and implement its financial operations system to ensure compliance with Generally Accepted Accounting Principles.
  - 1.2 The Navajo Nation shall submit a quarterly report by the 60<sup>th</sup> calendar day following the end of each quarter detailing the Title XIX Revenues and Expenditures to AHCCCS-DFSM. The quarterly report will be used by AHCCCS to reconcile the monthly payments made during the quarter to the Navajo Nation. If there is an overpayment or underpayment, AHCCCS will adjust future payments to the Navajo Nation accordingly to make the account whole. Failure of the Navajo Nation to submit timely quarterly financial reports shall result in payment delays to the Navajo Nation.
  - 1.3 The Navajo Nation shall submit a Quarterly Certification Statement that actual costs are in accordance with 2 C.F.R. Parts 200 and 300, and 45 C.F.R. Part 75.
  - 1.4 The Tribal Contractor is required to submit annual audited Financial Statements prepared in accordance with 2 C.F.R. Part 200, Subpart F after the state's fiscal year end.
  - 1.5 All costs allocable to Title XIX that have been treated as indirect costs have not been claimed as direct costs elsewhere.
  - 1.6 The Navajo Nation shall submit a copy of indirect cost percentage approval letters from the federal government upon receipt by the Navajo Nation .
2. Requests for extension of reporting deadlines shall be submitted in writing and must be received by AHCCCS prior to the report due date. Approvals for extension are valid only if issued in writing by AHCCCS.
3. Health Insurance Portability and Accountability Act (HIPAA). The Navajo Nation shall comply with the Administrative Simplification requirements of Subpart F of the HIPAA of 1996 (Public Law 107-191,110 Statutes 1936) and all Federal regulations implementing the Subparts that are applicable to the operations of the Navajo Nation by the dates required by Federal regulations.

## **III. TERMS AND CONDITIONS**

### **A. CONTRACT ADMINISTRATION AND OPERATION**

#### **1. Records.**

- 1.1 Under A.R.S. § 35-214 and § 35-215, the Navajo Nation shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Agreement for a period of five years after the completion of the

Agreement. All records shall be subject to inspection and audit by the State at reasonable times.

1.2 All books and records shall be maintained to the extent and in such detail as required by AHCCCS Rules and Policies. The AHCCCS records management guidelines are located at: <http://www.azahcccs.gov>. Records shall include, but not be limited to, financial statements, case files (both hard copy and stored data), and other records specified by AHCCCS.

1.3 At any time during the term of this Agreement and five (5) years thereafter, the Navajo Nation 's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Agreement or a subcontract. The Navajo Nation shall make available at its office at all reasonable times during the term of this Agreement and the period set forth in in this section, any of its records for inspection, audit or reproduction by any authorized representative of AHCCCS, State or Federal government.

1.4 The Navajo Nation shall preserve and make available all records for a period of five (5) years from the date of final payment under this Agreement except as provided below:

1.4.1 If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any such termination.

1.4.2 Records that relate to grievances, disputes, litigation or the settlement of claims arising out of the performance of this Agreement, or costs and expenses of this Agreement to which exception has been taken by AHCCCS, shall be retained by the Navajo Nation for a period of five years after the date of final disposition or resolution thereof.

1.4.3 Completed case files shall be scheduled for archive shipment to AHCCCS, as defined by AHCCCS Policy and Procedures.

**2. Offshore Performance of Work Prohibited:** Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the Agreement. This provision applies to work performed by subcontractors at all tiers.

**3. Licenses:** The Navajo Nation shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Navajo Nation.

**4. Term of Agreement and Option to Renew**

4.1 The initial term of this Agreement shall be for one (1) initial year with four (4) one-year options to extend, not to exceed a total contracting period of five (5) years. The terms and conditions of any such Agreement extension shall remain the same as the original Agreement, as amended.

4.2 All Agreement extensions shall be through amendment, and shall be at the sole option of AHCCCS.

## 5. Contract Changes

- 5.1 Amendments. The Agreement may be modified only through a Contract Amendment within the scope of the Agreement. Changes to the Agreement, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Navajo Nation are violations of the Agreement and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Navajo Nation shall not be entitled to any claim under this Agreement based on those changes.
- 5.2 Subcontracts. The Navajo Nation shall not enter into any Subcontract under this Agreement for the performance of this Agreement without the advance written approval of the Procurement Officer. The Navajo Nation shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Agreement.
- 5.3 Assignment and Delegation. The Navajo Nation shall not assign any right nor delegate any duty under this Agreement without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

## 6. Contract Interpretation

- 6.1 Arizona Law. This Agreement, including any claim or dispute arising hereunder submitted to binding arbitration, shall be interpreted under the applicable laws of the State of Arizona without regard to any choice of law provisions.
- 6.2 Severability. The provisions of this Agreement are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Agreement.
- 6.3 No Parole Evidence. This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 6.4 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

## 7. Contractual Remedies

- 7.1 Right to Assurance. If AHCCCS in good faith has reason to believe that the Navajo Nation does not intend to, or is unable to perform or continue performing under this Agreement, AHCCCS may demand in writing that the Navajo Nation give a written assurance of intent to perform. Failure by the Navajo Nation to provide written assurance within the number of days specified in the demand may, at the State's option, be the basis for terminating the Agreement or exercising other rights and remedies available by law or provided by the Agreement.
- 7.2 Corrective Action Plans. The Navajo Nation shall implement corrective action to bring

performance into compliance with AHCCCS requirements in accordance with the corrective action plan and timelines agreed to by the Navajo Nation and the AHCCCS. AHCCCS and the Navajo Nation will develop corrective action plans collaboratively.

7.3 Non-exclusive Remedies. The rights and the remedies of the State under this Agreement are not exclusive.

7.4 AHCCCS' provision of technical assistance to help the Navajo Nation achieve compliance with any relevant Agreement terms or Agreement subject matter issues does not relieve the Navajo Nation of its obligation to fully comply with any relevant Agreement term or subject matter issue or any and all other terms in this Agreement.

7.5 Right of Offset. The State shall be entitled to offset against any sums due the Navajo Nation, any expenses or costs incurred by the State, or damages or sanctions assessed by the State concerning the Navajo Nation's non-conforming performance or failure to perform the Agreement.

#### 7.6 Sanctions

7.6.1 AHCCCS reserves the right to impose financial sanctions if the Navajo Nation fails to comply with the terms of this Agreement, including the following:

7.6.1.1 Failure to provide required case management to an enrolled person;

7.6.1.2 Misrepresentation or falsification of information provided to AHCCCS;

7.6.1.3 Misrepresentation or falsification of information provided to an enrolled person, potential enrolled person, subcontractor or health care provider;

7.6.1.4 Noncompliance with quality of care and quality management requirements;

7.6.1.5 Submitting untimely, incomplete or inaccurate reports, deliverables or other information requested by AHCCCS;

7.6.1.6 Engaging in conduct which jeopardizes Federal Financial Participation;  
or

7.6.1.7 Failure to actively participate in care coordination activities/initiatives.

7.6.2 AHCCCS shall consider the severity of the violation and determine the amount of sanction. The amount of the sanction will be proportionate to the severity of the non-compliance action.

7.6.3 AHCCCS shall provide written notice to the Navajo Nation specifying the amount of the sanction, the grounds for the sanction, the amount of funds to be withheld from the Navajo Nation's administrative revenue payments, the steps necessary to avoid future sanctions and the Navajo Nation's right to file a claims dispute to challenge the sanction.

7.6.4 The Navajo Nation shall complete all necessary steps to correct the violation that precipitated the sanction. AHCCCS may impose additional sanctions, which may be equal to or greater than the sanction imposed for the unresolved violation, in the event the Navajo Nation fails to adequately correct the violation within established timeframes.

7.6.5 AHCCCS may offset against any payments due the Navajo Nation until the full sanction amount is paid.

## 8. Contract Termination

- 8.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Agreement within three (3) years after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State is or becomes at any time while the Agreement or an extension of the Agreement is in effect an employee of or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement. The cancellation shall be effective when the Navajo Nation receives written notice of the cancellation unless the notice specifies a later time. If the Navajo Nation is a political subdivision of the State, it may also cancel this Agreement as provided in A.R.S. § 38-511.
- 8.2 Gratuities. The State may, by written notice, terminate this Agreement, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Navajo Nation or a representative of the Navajo Nation to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Agreement, an amendment to the Agreement, or favorable treatment concerning the Agreement, including the making of any determination or decision about Agreement performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Navajo Nation.
- 8.3 Suspension or Debarment. The State may, by written notice to the Navajo Nation , immediately terminate this Agreement if the State determines that the Navajo Nation has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a Agreement shall attest that the Navajo Nation is not currently suspended or debarred. If the Navajo Nation becomes suspended or debarred, the Navajo Nation shall immediately notify the State.
- 8.4 Termination for Convenience. Upon thirty (30) days written notice to the other Party, either Party may terminate the Agreement, in whole or in part, without penalty or recourse. In the event of termination under this paragraph, all documents, data and reports prepared by the Navajo Nation under the Agreement shall become the property of and be delivered to the State upon demand. The Navajo Nation shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.
- 8.5 Termination for Default.
- 8.5.1 In addition to the rights reserved in the Agreement, the State may terminate the Agreement in whole or in part due to the failure of the Navajo Nation to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Agreement. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Navajo Nation.
- 8.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Navajo Nation under the Agreement shall become the property of and be delivered to the State on demand.

## 9. Contract Disputes and Arbitration

- 9.1 In the event of a dispute, claim or controversy ("Dispute") arising out of or related to this Agreement, the Parties agree that it is in their mutual best interest to meet as promptly as possible for the purpose of informally resolving said Dispute.
- 9.2 In the event that the Parties cannot resolve their Dispute informally after attempting to work in good faith toward resolution, the Parties to this Agreement agree to resolve all Disputes arising out of or relating to this Agreement through binding arbitration as provided in A.9.3 below.

### 9.3 Arbitration and Award

- 9.3.1 Upon notice by a Party to the other of the intent to arbitrate, the Dispute shall be finally and exclusively settle by submission of such Dispute to the American Arbitration Association ("AAA") under its then prevailing procedural rules contained in the AAA's Commercial Arbitration Rules to the extent that such rules shall not be interpreted to diminished, limit or void the limited waiver of sovereign immunity set forth in Section 1 above or to increase the enforcement right of the Parties. Within ten (10) days after the notice of intent to arbitrate, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten (10) days of their appointment. The third arbitrator shall be a practicing attorney, actively engaged in the practice of law for at least ten (10) years and a member in good standing of the bar of the State of Arizona. Alternatively, the third arbitrator may be retired judge of the federal court or the trial court of the State of Arizona. At least one of the arbitrators shall be knowledgeable with federal Indian law and one arbitrator shall have AAA-acknowledged expertise in the appropriate subject matter. By agreement of the parties, when the amount in controversy renders the cost of three arbitrators unreasonable, the parties may agree to select a single arbitrator to resolve a dispute. All arbitrators proceedings shall be held in Maricopa County, or at such other place as shall be agreed by the Parties
- 9.3.2 The award shall be made within sixty (60) days of the filing of the notice of intent to arbitrate, and the arbitrators shall agree to comply with the schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the majority of the Parties or by the majority of the arbitrators, if necessary. Any award rendered in any such arbitration proceeding shall be final and binding upon all Parties to the proceeding.
- 9.3.3 Enforcement
- 9.3.3.1 Failure by either Party to arbitrate any Dispute pursuant to the procedures set forth herein shall constitute a material breach of the Agreement and shall entitle the Party who demanded arbitration to cease performance of any obligation set forth in the Agreement.
- 9.3.3.2 Failure of either Party to comply with an arbitration award shall constitute a material breach of the Agreement and shall entitle the other Party to cease performance of any obligation set forth in the Agreement.

9.4 AHCCCS may take any action described in the Financial Provisions and/or Sections A.7 or A.8 of these Terms and Conditions prior to initiating or engaging in any process described under Section A.9.2 of these Terms and Conditions.

**10. Sovereign Immunity:** Nothing in this Agreement shall be construed as an express or implied waiver of either Party's sovereign immunity from suit in any forum or jurisdiction.

**11. Survival of Rights and Obligations after Agreement Expiration or Termination**

11.1 Any provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement shall survive termination or expiration of this Agreement and continue in full force and effect.

11.2 All representations and warranties made by the Navajo Nation under this Agreement shall survive the expiration or termination hereof.

**B. COMPLIANCE**

1. The Navajo Nation shall report, in writing, all cases of suspected fraud, waste and/or abuse involving the programs administered by AHCCCS to the AHCCCS Office of the Inspector General. To report fraud, waste and/or abuse, the Navajo Nation shall complete the AHCCCS Referral for Preliminary Investigation form with a copy sent to AHCCCS/DFSM.
2. The Navajo Nation shall cooperate with AHCCCS/OIG in any audit, review, investigation and/or request for information of the Navajo Nation.
3. The Navajo Nation shall permit and cooperate with any onsite review. The Navajo Nation shall provide contact information for coordinating these activities. A review by the AHCCCS-OIG and/or AHCCCS may be conducted without notice and for the purpose of ensuring program compliance. The Navajo Nation also agrees to respond to electronic, telephonic or written requests for information within the timeframe specified by AHCCCS-OIG and/or AHCCCS/DFSM. The Navajo Nation agrees to provide documents, including original documents, to representatives of the AHCCCS/DFSM and/or AHCCCS-OIG, upon request and at no cost. The AHCCCS/DFSM and/or AHCCCS-OIG shall allow a reasonable time for the Navajo Nation to copy the requested documents, not to exceed twenty (20) business days from the date of the AHCCCS/DFSM and/or AHCCCS-OIG request.

**C. RISK AND LIABILITY**

1. The Navajo Nation acknowledges that it will be responsible for claims of damages arising from personal injury or damages to persons or property to the extent they result from the negligence of Tribal officials or employees as provided for and in accordance with 1 N.N.C. §§ 551 et seq. Nothing herein shall be construed as a waiver of the Navajo Nation's sovereign immunity.
2. Should the Navajo Nation utilize a contractor(s) and subcontractor(s) the indemnification clause between the Navajo Nation and its contractor(s) and subcontractor(s) shall include the following:

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the Navajo Nation and the State of Arizona, and any jurisdiction or agency issuing

any permits for any work arising out of this Agreement, and its departments, agencies, boards, commissions, universities, , officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Additionally on all applicable insurance policies, contractor and its subcontractors shall name the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as an additional insured and also include a waiver of subrogation in favor of the State.

3. The Navajo Nation shall require any non-governmental contractor(s) or subcontractor(s) performing services in performance of this Agreement to comply with the Minimum Subcontract Provisions found on AHCCCS' website.
4. **Responsibility for Payments:** The Navajo Nation shall be responsible for issuing payment for services performed by the Navajo Nation's employees and will be responsible for and hold AHCCCS harmless for all claims whatsoever growing out of the lawful demands of employees, contractors, subcontractors, suppliers or any other third party incurred in the furtherance of the performance of the Agreement. The Navajo Nation shall, at AHCCCS' request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.
5. Force Majeure.

5.1 Except for payment of sums due, neither Party shall be liable to the other nor deemed in default under this Agreement if and to the extent that such Party's performance of this Agreement is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the Party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the Party declaring force majeure which such Party is unable to prevent by exercising reasonable diligence.

5.2 Force Majeure shall not include the following occurrences:

- 5.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 5.2.2 Late performance by a subcontractor unless the delay arises out of a force

- majeure occurrence in accordance with this force majeure term and condition;  
or
- 5.2.3 Inability of either the Navajo Nation or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

5.3 If either Party is delayed at any time in the progress of the work by force majeure, the delayed Party shall notify the other Party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed Party from performing in accordance with this Agreement.

5.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

## ADDENDUM 1: THE NAVAJO NATION CHART OF DELIVERABLES

The following table is a summary of the periodic reporting requirements for the Navajo Nation and is subject to change at any time during the term of the Agreement. The table is presented for convenience only and should not be construed to limit the Navajo Nation's responsibilities in any manner.

All required reports shall be submitted to the established AHCCCS SharePoint site no later than 5:00 p.m. Local Time on the date due.

If directed by AHCCCS program area to submit a specific report to a location other than the established SharePoint site, the Navajo Nation shall post notification of the submission upon delivery to the alternate location.

All deliverables are to be submitted to AHCCCS SharePoint site, unless otherwise noted, and to the programmatic area where noted.	WHEN DUE	SOURCE/ REFERENCE	SUBMIT TO
Incident/Accident and Deaths (IAD) Reports for enrolled Behavioral Health members	Weekly per CQM direction	Agreement, AMPM 960	CQM reporting portal
High Profile <b>ALERTS</b> of Incidents, Accidents and Deaths Involving Enrolled members	Within one (1) day of awareness	Agreement; Navajo Nation Clinical Operations Manual	AHCCCS DHCM IAD Portal
Quality of Concern (QOC) report	Weekly	CQM direction	CQM reporting portal
Notification of a Person in Need of Special Assistance	Ad Hoc, within three (3) business days of identifying	Agreement; AMPM 1220	As determined by AHCCCS
Notification of a Person <b>No Longer</b> in Need of Special Assistance	Ad Hoc, within ten (10) business days of determination	Agreement, AMPM 1220	As determined by AHCCCS
Comprehensive Report of Persons Identified as in Need of Special Assistance	Quarterly, ten (10) days after quarter end	Agreement; AMPM 1220	As determined by AHCCCS
Updates regarding Quarterly Report of Persons Identified as in need of Special Assistance	Quarterly, 10 <sup>th</sup> day of month following receipt of draft report from Office of Human Rights	Agreement; AMPM 1220	As determined by AHCCCS
Seclusion/Restraint Summary Report Concerning Persons with SMI	Quarterly, ten (10) days after quarter end	Agreement; AMPM 960	As determined by AHCCCS
Report of Each Use of Seclusion/ Restraint Concerning Persons with SMI	Quarterly, ten (10) days after quarter end	Agreement; AMPM 960	As determined by AHCCCS
High Needs/High Cost Clinical Staffing Sheets	Five (5) business days prior to the established meeting time	Agreement	AIHP Clinical Care SharePoint
Care Coordination Member Satisfaction Survey	Semi-annually as indicated in survey protocol	Agreement and DFSM workgroup	AIHP Clinical Care SharePoint
Attestation of Disclosure Information:	Annually, October 1 <sup>st</sup> and Ad Hoc	Agreement; ACOM Policy 103	As determined by AHCCCS

All deliverables are to be submitted to AHCCCS DFSM Compliance SharePoint and to the programmatic area where noted.	WHEN DUE	SOURCE/ REFERENCE	SUBMIT TO
Ownership & Control and Persons Convicted of a Crime			
Exclusions Identified Regarding Persons Convicted of a Crime	Immediately upon identification and Ad Hoc	Agreement	As determined by AHCCCS
Housing Spending Plan	Annually, no later than thirty (30) days from notification by AHCCCS that State funds have been allocated for housing development	Agreement	As determined by AHCCCS
Member Satisfaction Survey Report	Annually, as indicated in the current year's Survey Protocol;	Agreement;	As determined by AHCCCS
Revenue and Expense Summary Report and Certification Statement	Quarterly, Forty-five (45) days after first (1 <sup>st</sup> ), second (2 <sup>nd</sup> ) and third (3 <sup>rd</sup> ) quarter end and sixty (60) days after fourth (4 <sup>th</sup> ) quarter end	Agreement; State of Arizona Accounting Manual	As determined by AHCCCS
Security Rule Compliance Report with attached Security Rule Checklist	Annually, May 1 <sup>st</sup>	Agreement; ACOM Policy 108	As determined by AHCCCS
Audited Financial Statements for the Navajo Nation	Annually, No later than nine (9) months after the Navajo Nation's fiscal year end	Agreement: State of Arizona Accounting Manual	As determined by AHCCCS
Unexpended Funds Report	Annually, April 15 <sup>th</sup>	Agreement; State of Arizona Accounting Manual	As determined by AHCCCS
Reporting incidents of Suspected Fraud, Waste and/or Program Abuse	Immediately upon identification and Ad Hoc	Agreement;	As determined by AHCCCS
A List of trainings provided to behavioral health staff	Annually	Agreement	AHCCCS DFSM SFTP
Changes in Key Personnel	Within seven (7) days of notification of intended resignation or change	Agreement	AHCCCS DFSM SFTP
Data and Records Included in Agreement	Due Upon Request	Agreement	As determined by AHCCCS
Corrective Action Plan Updates	Due Upon Request, or upon schedule sent by ADHS	Agreement	As determined by AHCCCS

Response to Tribal Member Problem Resolution	As defined by AHCCCS	Agreement	As determined by AHCCCS
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## **ADDENDUM 2: BUSINESS ASSOCIATE AGREEMENT**

Amended 2013

This Addendum is made part of this Contract between the Arizona Health Care Cost Containment System ("AHCCCS") and the NAVAJO NATION, referred to as "Business Associate" in this Addendum.

AHCCCS and Business Associate agree that the underlying Contract shall comply with the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as set forth in Title 45, Parts 160 and 164 of the Code of Federal Regulations (the "CFR"), as amended. In the event of conflicting terms or conditions, this Addendum shall supersede the underlying Contract.

### **1. DEFINITIONS**

The following terms used in this Addendum shall have the same meaning as those terms in the HIPAA rules set forth in Title 45, Parts 160 and 164 of the CFR: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

### **2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

Business Associate agrees to:

- 2.1. Not use or disclose protected health information ("PHI") other than as permitted or required by this Addendum or as required by law;
- 2.2. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of protected health information other than as provided for by this Addendum;
- 2.3. Report to AHCCCS any use or disclosure of PHI not provided for by this Addendum of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR §164.410, and any security incident of which it becomes aware in the following manner:
  - 2.3.1. Reporting. Business Associate shall report to AHCCCS any use or disclosure of PHI not authorized by the Contract, by law, or in writing by AHCCCS. Business Associate shall make the report to AHCCCS's Privacy Official not less than twenty-four (24) hours after Business Associate learns of such unauthorized use or disclosure. Business Associate's report shall at least:
    - A. Identify the nature of the unauthorized use or disclosure;
    - B. Identify the PHI used or disclosed;
    - C. Identify who made the unauthorized use or received the unauthorized disclosure;
    - D. Identify what Business Associate has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure;
    - E. Identify what corrective action Business Associate has taken or shall take to prevent future similar unauthorized use or disclosure; and
    - F. Provide such other information, including a written report, as reasonably requested by AHCCCS's Privacy Official.
  - 2.3.2. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of the Contract.

- 2.3.3. Sanctions. Business Associate shall have and apply appropriate sanctions against any employee, subcontractor or agent who uses or discloses AHCCCS PHI in violation of this Addendum or applicable law.
- 2.4. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such information;
- 2.5. Make available PHI in a designated record set to AHCCCS as necessary to satisfy AHCCCS' obligations under 45 CFR §164.524;
- 2.6. Make any amendment(s) to PHI in a designated record set as directed or agreed to by AHCCCS pursuant to 45 CFR §164.526, or take other measures as necessary to satisfy AHCCCS' obligations under 45 CFR §164.526;
- 2.7. Maintain and make available the information required to provide an Accounting of Disclosures to AHCCCS as necessary to satisfy AHCCCS' obligations under 45 CFR §164.528;
- 2.8. To the extent Business Associate is to carry out one or more of AHCCCS' obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to AHCCCS in the performance of such obligation(s); and
- 2.9. Make its internal practices, books and records available to AHCCCS and the Secretary for purposes of determining compliance with the HIPAA rules.

### **3. PERMITTED USES AND DISLOSURES BY BUSINESS ASSOCIATE**

- 3.1. Business Associate may only use or disclosure PHI as necessary to perform the services and obligations set forth in the underlying Contract;
- 3.2. Business Associate may use or disclose protected health information as required by law;
- 3.3. Business Associate agrees to make uses and disclosures and requests for protected health information consistent with AHCCCS' Minimum Necessary Policy, located at [www.azahcccs.gov](http://www.azahcccs.gov);
- 3.4. Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by AHCCCS, except for the specific uses and disclosures set forth below in (3.5 and 3.6);
- 3.5. Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and
- 3.6. Business Associate may provide data aggregation services relating to the health care operations of AHCCCS.

### **4. PROVISIONS FOR AHCCCS TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS**

- 4.1. AHCCCS shall notify Business Associate of any limitation(s) in the AHCCCS Notice of Privacy Practices (found at [www.azahcccs.gov](http://www.azahcccs.gov)) under 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI;

- 4.2. AHCCCS shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and
- 4.3. AHCCCS shall notify Business Associate of any restriction on the use or disclosure of PHI that AHCCCS has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

## **5. TERM AND TERMINATION**

- 5.1. Term: This Addendum is effective upon the effective date of the underlying Contract and shall terminate on the date AHCCCS terminates the contract for cause as authorized in paragraph (b) of this Section, or for any other reason permitted under the contract, whichever is sooner.
- 5.2. Termination for Cause: Business Associate authorizes termination of the Contract by AHCCCS if AHCCCS determines that Business Associate has breached a material term of this Addendum and Business Associate has not cured the breach or ended the violation within the time specified by AHCCCS.
- 5.3. Obligations of Business Associate Upon Termination: Upon termination, cancellation, expiration or other conclusion of the Contract, Business Associate, with respect to PHI received from AHCCCS, or created, maintained, or received by Business Associate on behalf of AHCCCS, shall:
  - 5.3.1. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
  - 5.3.2. Destroy or return to AHCCCS all remaining PHI that the Business Associate still maintains in any form;
  - 5.3.3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
  - 5.3.4. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out in this Addendum that applied prior to termination; and
  - 5.3.5. Destroy or return to AHCCCS the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal and contractual responsibilities.
- 5.4. Survival: The obligations of Business Associate under this Section shall survive the termination of the Contract.

## **6. INDEMNIFICATION AND MISCELLANEOUS**

- 6.1. Regulatory References: A reference in this Addendum to a section in the HIPAA rules means the section as in effect or as amended.
- 6.2. Amendment: The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for compliance with the requirements of the HIPAA rules or any other applicable law.
- 6.3. Interpretation: Any ambiguity in this Addendum shall be interpreted to permit compliance with the HIPAA rules.