

**COMPACT  
BETWEEN  
THE CHEROKEE NATION  
AND THE  
UNITED STATES OF AMERICA**

**EXECUTED JUNE 30, 1993 AND  
AMENDED AND RESTATED EFFECTIVE OCTOBER 1, 2005**

*This Compact of Self-Governance is made and entered into by and between the Secretary of Health and Human Services of the United States of America ("Secretary"), represented by the Director of the Indian Health Service ("Director"), and the Cherokee Nation ("Nation") represented by the Principal Chief pursuant to the authority of the Nation's Constitution. This Compact is entered into under the Title V of the Indian Self-Determination and Education Assistance Act ("the Act"), as amended ("Title V"), which authorizes the Secretary to enter into compacts and funding agreements with Tribes. The Secretary has delegated the authority to enter into this Compact and Funding Agreement to the Director. This Compact reflects the Tribal commitment to assure access to a comprehensive, integrated, and Tribally-controlled health care delivery system.*

**RECITALS.**

**WHEREAS**, since time immemorial there has been a Cherokee Nation that has exercised the rights of self-government on behalf of the Cherokee people (*Cherokee Nation v. Georgia*, 1831);

**WHEREAS**, Federal health services to maintain and improve the health of the American Indians are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian people, 25 U.S.C. § 1601(a);

**WHEREAS**, the Congress has declared that it is the policy of the United States, in fulfillment of its special responsibilities and legal obligations to the American Indian people, to assure the highest possible health status for Indians and to provide all resources necessary to effect that policy, 25 U.S.C. § 1602(a);

**WHEREAS**, the Cherokee Nation, a Federally recognized Indian tribe as defined in 25 U.S.C. § 450b(e) and 25 U.S.C. § 458aaa(b), provides comprehensive, integrated, and Tribally-controlled health care services directly, by retaining certain programs with the Indian Health Service, and through purchasing other services;

**WHEREAS**, in furtherance of the Federal policy of American Indian and Alaska Native Tribal self-determination and self-governance, Congress has directed the Secretary of Health and Human Services to carry out the "Tribal Self-Governance Program" authorized by Title V of the Indian Self-Determination and Education Assistance Act;

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**WHEREAS**, Congress, in Title V, has authorized the Secretary to negotiate and implement a Compact and Funding Agreements with Tribes that have satisfied the requirements set forth in 25 U.S.C. § 458aaa-2(c);

**WHEREAS**, Congress has directed that the Funding Agreement, which the Secretary negotiates with the Nation, shall authorize the Nation to plan, conduct, consolidate, administer, receive full Tribal shares of funding, for all programs, services, functions and activities (or portions thereof), that are carried out for the benefit of Indians because of their status as Indians without regard to the agency or office of the IHS within which the program, service, function, or activity (or portion thereof) is performed, 25 U.S.C. § 458aaa-4(b)(1);

**WHEREAS**, the Funding Agreement shall set forth terms that generally identify the programs, services, functions or activities (or portions thereof) to be performed or administered, and for such programs, services, functions or activities the general budget category assigned; the funds to be provided, including those funds to be provided on a recurring basis; the time and method of transfer of funds; the responsibilities of the Secretary; and any other provisions with respect to which the Nation and the Secretary agree in accordance with 25 U.S.C. § 458aaa-4;

**WHEREAS**, the Nation shall not be obligated to continue performance of programs, services, functions, or activities (or portions thereof) set forth in the Funding Agreement that require expenditure of funds in excess of the amount transferred under the Compact or Funding Agreement as provided in 25 U.S.C. § 458aaa-7(k);

**WHEREAS**, nothing in Title V of the Act shall be construed to limit or reduce in any way the funding for any program, project or activity serving an Indian Tribe under Title V or any other applicable Federal law, 25 U.S.C. § 458aaa-14(a);

**WHEREAS**, in Title V, Congress has directed that the Funding Agreement, which the Secretary negotiates with the Nation shall contain certain provisions as specified in 458aaa-6(a);

**WHEREAS**, Congress has directed that each provision of the Act and this Compact and associated Funding Agreements shall be liberally construed for the benefit of Indian Tribes participating in self-governance and any ambiguity shall be resolved in favor of the Nation, 25 U.S.C. § 458aaa-11(f);

**WHEREAS**, except as otherwise provided by law the Secretary shall interpret all Federal laws, Executive orders, and regulations in a manner that will facilitate the inclusion of programs, services, functions, and activities (or portions thereof) and funds associated therewith into this Compact and associated Funding Agreements, the implementation of this Compact and associated Funding Agreements; and the achievement of the Nation's health goals and objectives, 25 U.S.C. § 458aaa-11(a);

**WHEREAS**, this Compact was executed by the Principal Chief of the Cherokee Nation pursuant to the authority of the Constitution and by Resolutions of the Council of the Cherokee Nation No. 11-93, dated February 13, 1993, attached hereto as Exhibit A, and No. 15-06, dated March 17, 2006, attached hereto as Exhibit B;

**NOW, THEREFORE,** the Secretary and the Cherokee Nation do hereby agree to enter into, undertake, and be bound by this Compact as set forth in Title V of the Act.

## **ARTICLE 1 — AUTHORITY AND PURPOSE**

**SECTION 1.1 – AUTHORITY.** This Compact of Self-Governance is authorized by Title V of the Act, as amended, 25 U.S.C. § 458aaa *et seq.*, and is hereby entered into by the Secretary, represented by the Director, and the Cherokee Nation, represented by the Principal Chief. The Director of the Indian Health Service by signing this Compact commits the Secretary to the extent and within the scope of the Secretary's delegation of authority to enter into Compacts and Funding Agreements pursuant to Title V or as otherwise authorized.

**SECTION 1.2 – PURPOSE.** This Compact shall be liberally construed for the benefit of Indian Tribes participating in self-governance and any ambiguity shall be resolved in favor of the Nation. 25 U.S.C. § 458aaa- 11(f).

**1.2.1** The Congress has found that transferring full control and funding to Tribal governments, upon tribal request, over decision making for Federal programs, services, functions, and activities (or portions thereof) is an appropriate and effective means of implementing the Federal policy of government-to-government relationships with Indian Tribes and strengthens the Federal policy of self-determination. It is the policy of Congress to call for the full cooperation of the Department of Health and Human Services and its constituent agencies in the implementation of Tribal self-governance to ensure the continuation of the trust responsibility of the United States to Indian Tribes and Indian individuals. The Congress has further called for the cooperation of the Department of Health and Human Services to permit an orderly transition from Federal domination of programs and services to provide Indian Tribes with meaningful authority, control, funding and discretion to plan, conduct, redesign, and administer programs, services, functions, and activities (or portions thereof) that meet the needs of the individual Tribal communities.

**1.2.2** This Compact enables the Cherokee Nation to plan, conduct, consolidate, re-design and administer programs, services, functions, and activities of the Indian Health Service under the terms set forth in the Compact as provided in Title V of the Act; to reallocate funds for such programs, services, functions, and activities according to the priorities of the Nation, and to streamline the Federal IHS bureaucracy in accordance with 25 U.S.C. § 458aaa-4 and 458aaa-5.

**1.2.3** This Compact enables the United States to maintain and improve its unique and continuing relationship with and responsibility to Tribes through Tribal self-governance and to permit an orderly transition from Federal domination of programs and services. This Compact and associated Funding Agreements transfers to the Nation the responsibility for the programs, services, functions, and activities of the Indian Health Service included in the Funding Agreement and provides the Nation with meaningful authority, control, funding, and discretion to plan, conduct, redesign, and administer programs, services, functions, and activities pursuant to Title V. 25 U.S.C. § 458aaa-2(f). In fulfilling its responsibilities under the Compact and consistent with: the April 29, 1994, Memorandum from the President of the United States of

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America for the Heads of Executive Departments and Agencies; Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments; the September 23, 2004, Memorandum from the President of the United States of America for the Heads of Executive Departments and Agencies; and the Department of Health and Human Services Tribal Consultation Policy, the Secretary hereby pledges that the Indian Health Service will conduct all relations with the Nation on a government-to-government basis.

**SECTION 1.3 – TERRITORIAL JURISDICTION OF THE CHEROKEE NATION.** The boundaries of the Cherokee Nation territory shall be those described by the patents of 1838 and 1846, diminished only by the Treaty of July 19, 1866, and the Act of March 3, 1893, and expanded by lands acquired in trust since 1893. For purposes of this Compact and Funding Agreement, the service area does not include the lands acquired in trust since 1893 and the service area is fully contained within all or part of a fourteen county area located in the Claremore and Tahlequah Service Units of the Oklahoma City Area Indian Health Service.

**SECTION 1.4 – APPLICABLE LAW AND FORUMS.** The parties agree that the laws of the United States shall apply to any dispute between the United States and the Nation arising out of the Compact or Funding Agreement. The duly enacted laws of the Nation shall be applied with regard to any matter or action involving a party other than the United States in the execution of this Compact and the powers and decisions of the Nation's Court shall be respected, to the extent that Federal law, construed in accordance with the applicable rules of construction and Title V, as amended, is not inconsistent.

## **ARTICLE 2— OBLIGATIONS OF THE UNITED STATES**

**SECTION 2.1 – TRUST RESPONSIBILITY.** The Secretary is prohibited from waiving, modifying, or diminishing in any way the trust responsibility of the United States with respect to the Cherokee Nation and individual Indians that exists under treaties, Executive orders, other laws or court decisions. 25 U.S.C. § 458aaa-6(g).

### **SECTION 2.2 – PROGRAMS RETAINED.**

**2.2.1 SECRETARIAL RESPONSIBILITY.** The Secretary hereby retains the responsibility for the programs, services, functions, and activities that are not assumed by the Nation through its Funding Agreement, and the Nation shall continue to be entitled to the full benefit of those programs, services, functions, and activities retained by the Indian Health Service. 25 U.S.C. § 450(c).

**2.2.2 INFORMATION REGARDING SERVICES OF THE INDIAN HEALTH SERVICE.** At the written request of the Nation, the Indian Health Service shall provide the Nation with a written list of the programs, services, functions, and activities that continue to be operated by the Indian Health Service that the Nation is eligible to assume. To the fullest extent permitted by law, the Secretary will respond to requests from the Nation to provide information, including financial data, relevant to IHS's ongoing programs, services, functions, or activities. The Secretary will cooperate with the Nation to facilitate the inclusion of programs, services, functions, and activities in future Funding Agreements.

**SECTION 2.3 – ELIGIBILITY FOR NEW PROGRAMS, SERVICE INCREASES, AND NON-RECURRING RESOURCES.** In accordance with 25 U.S.C. § 458aaa-5(h), the Nation shall be eligible for new programs and resources of the Secretary on the same basis as other Tribes. When new services, funding, or other resources become available, the Secretary shall advise the Nation of such.

**SECTION 2.4 – [RESERVED]**

**SECTION 2.5 – SAVINGS.** To the extent that programs, services, functions and activities (or portions thereof) carried out by Indian Tribes under Title V reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of Tribal shares and other funds determined under 25 U.S.C. § 458aaa-7(c), the Secretary shall make such savings available to Indian Tribes, including the Nation, inter-Tribal consortia, or Tribal organizations, for the provision of additional services to program beneficiaries in a manner equitable to directly served, contracted, and compacted programs. 25 U.S.C. § 458aaa-6(f).

**SECTION 2.6 – REPORTS TO CONGRESS.** In accordance with 25 U.S.C. § 458aaa-13, the Secretary shall submit to the Senate Committee on Indian Affairs and the House Resources Committee a written report not later than January 1 of each year on the administration of Title V of the Act. Each report shall include a detailed analysis on the level of need being presently funded or unfunded for the Nation. The contents of each report shall comply with 25 U.S.C. § 458aaa-13(b). In compiling the reports, the Secretary may not impose any reporting requirements on the Nation not otherwise provided in Title V of the Act. The Secretary shall provide the Nation with a draft of each report required to be submitted to Congress under this provision for a thirty (30) day comment period prior to the submission of the report to Congress so that the Nation may comment on the report. The Secretary shall include the Nation's comments in the final report to Congress.

**ARTICLE 3 — TERM AND GENERAL PROVISIONS**

**SECTION 3.1 – TERM AND EFFECTIVE DATE.** This Amended and Restated Compact shall be effective, after execution by both parties, on October 1, 2005, and provided the Nation has a Funding Agreement in effect, shall remain in effect for so long as is permitted by Federal law or until amended or terminated by mutual written agreement, retrocession, or reassumption pursuant to 25 U.S.C. § 458aaa-3(d).

**SECTION 3.2 – FUNDING AMOUNT.** Subject to the appropriation of funds by the Congress of the United States and in accordance with 25 U.S.C. § 458aaa-7, the Secretary shall provide the total amounts specified in the Funding Agreement. The Nation is hereby assured that future funding of the Nation's subsequent Funding Agreements shall only be reduced pursuant to the provisions of 25 U.S.C. § 458aaa-7(d)(1)(C)(ii).

**SECTION 3.3 – PAYMENT.**

**3.3.1 PAYMENT SCHEDULE.** Payment shall be made according the schedule set forth in the Funding Agreement.

**3.3.2 INTEREST ON ADVANCES.** The Cherokee Nation shall be permitted to retain interest earned on funds paid under a Funding Agreement. Interest earned on such payments shall not diminish the amount of funds the Cherokee Nation is authorized to receive under its Funding Agreement in the year earned or in any subsequent fiscal year. 25 U.S.C. § 458aaa-7(h).

**3.3.3 INVESTMENT.** All funds transferred under the Funding Agreement pursuant to this Compact shall be managed using the prudent investment standard pursuant to 25 U.S.C. § 458aaa-7(h).

**SECTION 3.4 – [RESERVED].**

**SECTION 3.5 – AUDITS.**

**3.5.1 SINGLE AUDIT.** The Nation shall provide to the Designated Official of the Secretary, which is the National External Audit Review Center (or its successor), an annual single organization-wide audit as prescribed by the Single Audit Act of 1984, as amended, 31 U.S.C. § 7501, *et seq.* A copy of this audit will be sent simultaneously to the Indian Health Service Area Office, the cognizant agency, and the Federal Audit Clearinghouse. 25 U.S.C. § 458aaa-5(c)(1); 42 C.F.R. § 137.171 and 172.

**3.5.2 COST PRINCIPLES.** The Nation shall apply cost principles under the applicable OMB circular, except as modified by 25 U.S.C. § 450j-1, other provisions of law, or by any exemptions to applicable OMB circulars subsequently granted by OMB. No other audit or accounting standards shall be required by the Secretary. Any claim by the Federal Government against the Nation relating to funds received under a Funding Agreement based on any audit shall be subject to the provisions of 25 U.S.C. § 450j-1(f). 25 U.S.C. § 458aaa-5(c)(2).

**SECTION 3.6 – RECORDS.**

**3.6.1 INCORPORATION OF THE PRIVACY ACT.** Pursuant to 25 U.S.C. § 458aaa-5(d)(1), records of the Nation shall not be considered Federal records for purposes of chapter 5 of title 5 of the United States Code, except that:

**3.6.1.1. RECORDS DISCLOSURE.** Patient records, financial records and personnel records may be disclosed only in accordance with 5 U.S.C. § 552a(b); and

**3.6.1.2. RECORDS STORAGE.** Pursuant to 25 U.S.C. § 450j(o) and 42 C.F.R. § 137.178, the patient records generated by the Nation may be stored, at the option of the Nation, at Federal Records Centers to the same extent and in the same manner as other Health and Human Services' patient records.

**3.6.2 CONFIDENTIALITY STANDARDS.** The Nation will maintain confidentiality in accordance with Cherokee statutes, regulations, policies and procedures, which are consistent with the purposes and guidelines of Health Insurance Portability and Accountability Act of 1996 and the Federal Privacy Act of 1974.

**3.6.3 RECORD KEEPING SYSTEM.** The Nation shall maintain a record keeping system pursuant to the requirements of Cherokee statutes, regulations, policies and procedures. Such record keeping system, and reasonable access to such records by the Secretary, shall satisfy the requirements of 25 U.S.C. § 458aaa-5(d)(2) and 42 C.F.R. §§ 137.175 and 137.177.

**3.6.4 PREEMPTION.** Cherokee statutes, regulations, policies and procedures which provide more protection to patient records, financial records or personnel records shall preempt other applicable statutes, regulations, policies and procedures, provided they do not impede the reasonable access by the Secretary required under 25 U.S.C. § 458aaa-5(d)(2).

### **SECTION 3.7 – PROPERTY.**

**3.7.1 IN GENERAL.** The provisions of 25 U.S.C. § 458aaa-11(c) are hereby incorporated by reference into this Compact.

#### **3.7.2 – [RESERVED]**

**3.7.3 ACCESS TO FEDERAL PROPERTY.** To the extent IHS has been provided notice of the availability of Federal property that may be made available to Tribes under the Act, the Secretary shall provide notice of such to the Nation.

**3.7.4 PARTICIPATION IN “PROJECT TRANSAM.”** The Nation shall be notified of and authorized (to the extent IHS has authority to provide authorization) to participate in property screenings associated with “Project Transam” (or any successor project) by IHS Headquarters. Pursuant to the aforementioned, IHS shall notify the Nation of scheduled lotteries to be conducted relevant to “Project Transam” whereby the Nation is authorized (to the extent IHS has authority to provide such authorization) to observe and/or participate in such process.

**3.7.5 LEASES.** Upon the request of the Nation, the Secretary shall enter into a lease with the Nation if the Nation has title to, a leasehold interest in, or a trust interest in, a facility used by the Nation for the administration and delivery of services under the Act. 25 U.S.C. § 450 j(l)(1).

### **SECTION 3.8 – EFFECT OF CIRCULARS, POLICIES, MANUALS, GUIDANCES, AND RULES.**

Pursuant to 25 U.S.C. § 458aaa-16(e), unless expressly agreed to by the Nation in this Compact or associated Funding Agreements, the Nation shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Indian Health Service, except for the eligibility provisions of 25 U.S.C. § 450j(g) and regulations promulgated under 25 U.S.C. § 458aaa-16 (*see* 42 C.F.R. Part 137), unless such regulations have been waived pursuant to 25 U.S.C. § 458aaa-11(b), (*see* 42 C.F.R. Part 137 Subpart J).

### **SECTION 3.9 – DISPUTES.**

**3.9.1 APPLICATION OF TITLE V.** All disputes between the Indian Health Service and the Nation under this Compact shall be subject to Title V and the provisions of 25 U.S.C. § 450m-1 and all remedies provided for therein. Actions and proceedings to enforce the Nation’s rights and the Secretary’s obligations under this Compact shall be subject to the Equal Access to

Justice Act, Public Law 96-481, as amended, to the extent allowed by Federal statutes and regulations. See 42 C.F.R. § 137.450.

**3.9.2 ADMINISTRATIVE DISPUTE RESOLUTION ACT.** In the alternative, the Indian Health Service and the Nation may use the processes authorized and encouraged in the Administrative Dispute Resolution Act, 5 U.S.C. § 571 *et seq.*, for more informal resolution of disputes arising under this Compact and associated Funding Agreement.

#### **SECTION 3.10 – SUBSEQUENT FUNDING AGREEMENTS.**

**3.10.1 INITIATION OF NEGOTIATIONS.** The negotiation process for subsequent Funding Agreements shall begin within 30 days of a request by the Nation (or at some other date agreed upon by the parties). The Secretary will provide, to the extent such information is available, financial and other information relevant to the programs, services, functions, and activities carried out by the Nation, at least 60 days prior to the end of the fiscal year, and comply with the Nation's request for information needed to determine funds that may be available for a successor Funding Agreement.

**3.10.2 CONTINUATION OF COMPACT AND FUNDING AGREEMENT.** The terms of this Compact and the existing Funding Agreement shall, at the option of the Nation, remain in full force and effect until a subsequent Funding Agreement becomes effective. As provided in 25 U.S.C. § 458aaa-4(e), the terms of the subsequent Funding Agreement will become retroactive to the end of the term of the preceding Funding Agreement. However, a later effective date may be mutually agreed upon. Any increases in funding to which Indian Tribes are entitled by law or which have been made available by Congress, or increases which the Nation subsequently negotiates, shall be included in the Nation's subsequent Funding Agreement.

**SECTION 3.11 – HEALTH STATUS REPORTS.** In accordance with 25 U.S.C. § 458aaa-6(a)(1), the Nation shall provide the Secretary a health status and service delivery report to the extent that relevant data is not otherwise available to the Secretary and specific funds for this purpose are provided to the Nation in its Funding Agreement. Such reporting may impose only minimal burdens on the Nation and such requirements must have been promulgated under 25 U.S.C. § 458aaa-16.

#### **SECTION 3.12 – TRANSPORTATION AND OTHER SUPPLY SOURCES.**

**3.12.1 USE OF MOTOR VEHICLES.** Subject to agreement of the General Services Administration (GSA) and at the Nation's request, the Secretary shall make best efforts to acquire Interagency Motor Pool (IMP) vehicles and related services for performance of programs, services, functions, and activities under this Compact and associated Funding Agreements in accordance with GSA regulations. The Nation will satisfy any reporting requirements to the extent provided for in the Nation's agreements with the GSA, which are not attached to this Compact or Funding Agreement and are not incorporated by reference into this Compact or Funding Agreement.

**3.12.2 OTHER SUPPLY SOURCES.** In the event the Nation elects to carry out the Compact or Funding Agreement with the use of Federal personnel, Federal supplies (including



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supplies available from Federal warehouse facilities), Federal supply sources (including lodging, airline transportation, and other means of transportation including the use of interagency motor pool vehicles) or other Federal resources (including supplies, services, and resources available to the Secretary under any procurement contracts in which the Department is eligible to participate), the Secretary shall acquire and transfer such personnel, supplies, or resources to the Nation. 25 U.S.C. § 458aaa-7(e).

**SECTION 3.13 – LIMITATION OF COSTS.** If at any time the Nation has reason to believe that the total amount provided for a specific activity in the Compact or Funding Agreement is insufficient the Nation may provide reasonable notice of such insufficiency to the Secretary. If the Secretary does not increase the amount of funds transferred under the Funding Agreement, the Nation may suspend performance of the activity until such time as additional funds are transferred, provided the Nation gave reasonable notice to the Secretary. 25 U.S.C. § 458aaa-7(k).

**SECTION 3.14 – REASSUMPTION.** The Secretary may reassume a program, service, function, or activity (or portions thereof) carried out by the Nation under this Compact and associated Funding Agreements, and the funding associated with such program, service, function or activity (or portion thereof), pursuant to 25 U.S.C. § 458aaa-6(a)(2) and the regulations at 42 C.F.R. Part 137, Subpart M.

**ARTICLE 4— OBLIGATIONS OF CHEROKEE NATION**

**SECTION 4.1 – [RESERVED]**

**SECTION 4.2 – [RESERVED]**

**SECTION 4.3 – COMPACT PROGRAMS.** The programs, services, functions, and activities that are the responsibility of the Nation under this Compact are identified in the Nation's Funding Agreement.

**SECTION 4.4 – ELIGIBILITY FOR SERVICES.** The health care programs, services, functions, and activities the Nation is authorized to provide under this Compact and associated Funding Agreements shall be carried out using the eligibility criteria as set out in the form of 42 C.F.R. Part 36 as republished in Volume 64 Federal Register, Page 5831B (October 28, 1999) (hereinafter the "1986 Regulations"), including the criteria therein defining which Indians are eligible for such services, subject to the additional provision of 25 U.S.C. § 1680c as to provision of services to ineligible individuals who are not Indians under the 1986 regulations. The provision of such programs, services, functions, and activities shall otherwise be in accordance with and subject to the provisions of 25 U.S.C. § 450f(d), Pub. L. 101-512, 25 U.S.C. § 1680c(d), 25 C.F.R. Part 900 Subpart M, Section 5.3.1 of this Compact [Federal Tort Claims Act Coverage], and Section 3.4 of the Funding Agreement [Federal Tort Claims Act].

If the Nation should later elect, pursuant to 25 U.S.C. § 1680c(a)(2) and (b)(1)(B), to provide programs, services, functions, and activities to ineligible individuals in circumstances beyond those authorized by 25 U.S.C. § 1680c(a) and (c) or by the 1986 regulations, such decisions shall not be effective until compliance with all requirements of 25 U.S.C. §§

1680(a)(2) or (b)(1)(B), as applicable. It is also agreed that the Nation will not take action to extend services to ineligible individuals under 25 U.S.C. § 1680c(b)(1)(B) under the Funding Agreement in any circumstance which would involve use of pharmaceuticals from any Federal source of supply. This does not constitute advance agreement between the Indian Health Service and the Nation that the Nation has met the requirements necessary to serve ineligible individuals under 25 U.S.C. § 1680c(b)(1)(B). The Indian Health Service believes that a joint determination is necessary for the Nation to provide services under 25 U.S.C. § 1680c(b)(1)(B).

Where the additional criteria and limitations regarding eligibility for services applicable to all persons established in the 1986 regulations are satisfied, there are no other prerequisites for the Nation to serve eligible Indians as defined in those regulations, or to serve ineligible individuals in the circumstances called for in 25 U.S.C. §§ 1680c(a) and (c), provided that the Nation will limit its treatment of ineligible individuals under 25 U.S.C. § 1680c(c) presenting in the circumstances called for in 25 U.S.C. § 1680c(c) to direct patient care and administer contract health services to such individuals consistent with the eligibility sections of the Contract Health Services chapter of the *IHS Manual* and applicable law.

**SECTION 4.5 – REALLOCATION, REDESIGN AND CONSOLIDATION.** In accordance with 25 U.S.C. § 458aaa-5(e), the Nation may redesign or consolidate programs, services, functions, and activities (or portions thereof) included in the Funding Agreement under 25 U.S.C. § 458aaa-4 and reallocate or redirect funds for such programs, services, functions, and activities (or portions thereof) in any manner that the Nation deems to be in the best interest of the health and welfare of the Indian community being served, only if the redesign or consolidation does not have the effect of denying eligibility for services to population groups otherwise eligible to be served under applicable Federal law.

**SECTION 4.6 – CONSOLIDATION WITH OTHER PROGRAMS.** The Nation may consolidate programs, services, functions, and activities and associated funds identified in its Funding Agreement with other programs, services, functions, and activities provided with its own funds or funds from other sources, provided that the programs, services, functions, and activities are allowable for inclusion in a funding agreement under 25 U.S.C. § 458aaa-4. In cases in which the Nation consolidates programs, services, functions, and activities under this section, the Nation shall not be required to separate dollars or programs, services, functions, and activities so long as the Nation can provide sufficient data to permit an acceptable program and financial audit to be conducted.

**SECTION 4.7 – PROGRAM INCOME, INCLUDING MEDICARE/MEDICAID.** All Medicare, Medicaid or other program income earned by the Nation shall be in addition to that negotiated in the Funding Agreement and the Nation may retain all such income, including Medicare/Medicaid, and expend such funds in the current year or in future years, except to the extent that the Indian Health Care Improvement Act (25 U.S.C. § 1601 *et seq.*) provides otherwise for Medicare and Medicaid receipts. Such additional funds shall not result in any offset or reduction in the negotiated amount of the Funding Agreement. 25 U.S.C. § 458aaa-7(j).

**SECTION 4.8 – CARRYOVER OF FUNDS.** All funds paid to the Nation in accordance with this Compact or associated Funding Agreements shall remain available until expended. In the event the Nation elects to carry over funding from one year to the next, such carryover shall not

diminish the amount of funds the Nation is authorized to receive under its Funding Agreement in that or any subsequent fiscal year. 25 U.S.C. § 458aaa-7(i). Any such funds, and the corresponding programs, services, functions, and activities shall not be subject to the provisions of previous funding agreements. Funds carried over will be expended in accordance with the applicable provisions of the Funding Agreement in effect at the time of the expenditure.

**SECTION 4.9 – MATCHING FUNDS.** All funds provided under this Compact or associated Funding Agreements shall be treated as non-Federal funds for purposes of meeting matching or other cost participation requirements under any other Federal or non-Federal program pursuant to 25 U.S.C. § 458aaa-11(d).

## **ARTICLE 5 — OTHER PROVISIONS**

**SECTION 5.1 – DESIGNATED OFFICIALS/AGENT.** On or before the effective date of this Compact, both the Secretary and the Nation shall provide a written designation of an individual(s) as their representatives/liaisons. The Secretary and the Nation shall direct all communications about the Compact, and relevant Funding Agreement, to the appropriate designee to the extent consistent with applicable law. Reference herein to the Nation or the Secretary shall include the respective Designated Official thereof. Should the Secretary or the Nation, during this Compact, designate a different individual as their representative/liaison, the parties shall inform the other party in writing at the time of the designee change.

**SECTION 5.2 – INDIAN PREFERENCE IN EMPLOYMENT, CONTRACTING AND SUB-CONTRACTING.** The Tribal employment and contract preference laws of the Cherokee Nation shall govern with respect to the Nation's administration of the Compact and associated Funding Agreements or portions thereof.

### **SECTION 5.3 – FEDERAL TORT CLAIMS ACT COVERAGE; INSURANCE.**

#### **5.3.1 FEDERAL TORT CLAIMS ACT COVERAGE.**

**5.3.1.1 Generally.** For purposes of Federal Tort Claims Act coverage, the Nation and its employees (including individuals performing personal services contracts with the Nation to provide health care services) are deemed to be employees of the Federal government while performing work under this Compact and associated Funding Agreements. This status is not changed by the source of the funds used by the Nation to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the Nation. Under this Compact, the Nation's employees may be required as a condition of employment to provide health services to non-IHS beneficiaries in order to meet the obligations under this Compact and associated Funding Agreement. These services may be provided in the Nation's facilities or in non-Nation facilities. The employees' status for Federal Tort Claims Act purposes is not affected

**5.3.1.2 Case-by-Case Determination.** The Nation understands that whether the Federal Tort Claims Act applies in any particular case is decided on an individual case-by-case basis by the United States Department of Justice and subsequently by the Federal courts.

**5.3.2 INSURANCE.** The Nation may, without approval of the Secretary, expend funds provided under this Compact and associated Funding Agreements to purchase insurance and indemnification, including insurance covering the risk of loss of or damage to property used in connection with this Compact and associated Funding Agreements without regard to the ownership of such property, to the extent that the expenditure of the funds is supportive of the programs, services, functions, and activities carried out by the Nation under this Compact and associated Funding Agreements.

**SECTION 5.4 – COMPACT MODIFICATIONS OR AMENDMENTS.** Amendment to this Compact must be in writing and be signed by the authorized signatory for the Nation and the Secretary.

**SECTION 5.5 – CONSTRUCTION FUNDING.** The Nation may carry out construction projects or programs in accordance with Titles I or V of the Act, the Indian Health Care Improvement Act, and Public Law 86-121. In doing so, the Nation elects to comply with the regulations of the elected statutory provision. 42 C.F.R. § 137.272.

**SECTION 5.6 – OFFICIALS NOT TO BENEFIT.** No member of Congress shall be admitted to any share or part of any contract executed pursuant to this Compact, or to any benefit that may arise from such Compact. This section 5.6 may not be construed to apply to any contract with a third party entered into under this Compact if such contract is made with a corporation for the general benefit of the corporation. 25 U.S.C. §450(c)(e)(3).

**SECTION 5.7 – COVENANT AGAINST CONTINGENT FEES.** The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed pursuant to this Compact upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

**SECTION 5.8 – [RESERVED]**

**SECTION 5.9 – USE OF FEDERAL EMPLOYEES.** The provisions of 25 U.S.C. § 450i, as set forth in the individual Memoranda of Agreement and Inter-Governmental Personnel Act Agreements entered into by the Indian Health Service to assign or detail individuals to the Nation, shall apply to this Compact and associated Funding Agreements. Individual Memoranda of Agreement and Inter-Governmental Personnel Act Agreements entered into under this section 5.9 shall not be incorporated by reference into this Compact or a Funding Agreement under this Compact.

**SECTION 5.10 – EXTRAORDINARY OR UNFORESEEN EVENTS.** This Compact is intended to obligate the Nation to carry out all usual and ordinary functions respecting the programs, services, functions, and activities for which it is undertaking to assume responsibility under its Funding Agreement. In the event major unforeseen or extraordinary events occur, as jointly identified by the Nation and the Secretary, with consequences beyond the control of the Nation, the IHS will make resources available to the Nation to deal with the unforeseen circumstance on the same basis as they would have been available to non-Compact Tribes or the Indian Health Service had they encountered a similar circumstance.

**SECTION 5.11 – MATURE CONTRACTOR STATUS UPON COMPACT TERMINATION.** In accordance with 25 U.S.C. § 458aaa-5(g)(3), should the Nation elect to convert all or some of the programs, services, functions, or activities operated under the Compact back to contract status under Title I, the resulting self-determination contract shall be a mature self-determination contract. Such conversion would occur only at the end of the Compact term, on another date mutually acceptable to the Nation and the Secretary, or as otherwise provided in this Compact, and will be implemented in a manner which avoids any interruption of services.

**SECTION 5.12 – [RESERVED]**

**SECTION 5.13 – SOVEREIGN IMMUNITY.** Nothing in this Compact or in any Funding Agreement shall be construed as a waiver by the Nation or the United States of America of its sovereign immunity.

**SECTION 5.14 – SECRETARIAL INTERPRETATION AND RULES OF CONSTRUCTION.** Except as otherwise provided by law, the Secretary shall interpret all Federal laws, Executive orders, and regulations in a manner that will facilitate the inclusion of programs, services, functions, and activities (or portions thereof) and funds associated therewith, into this Compact and the associated Funding Agreements; the implementation of this Compact and the associated Funding Agreements; and achievement of the Nation's health goals and objectives, in accordance with 25 U.S.C. § 458aaa-11(a). Each provision of Title V of the Act and of this Compact and associated Funding Agreements shall be liberally construed for the benefit of the Nation and any ambiguity shall be resolved in favor of the Nation. 25 U.S.C. § 458aaa-11(f).

**SECTION 5.15 – SEVERABILITY.**

**5.15.1** Except as provided in this section, this Compact shall not be considered invalid, void or voidable if any section or provision of this Compact is found to be invalid, unlawful or unenforceable by a court of competent jurisdiction.

**5.15.2** The parties will seek agreement to amend, revise or delete any such invalid, unlawful or unenforceable section or provision, in accordance with the provisions of this Compact.

**SECTION 5.16 – APPLICABILITY OF TITLE I PROVISIONS.** At the request of the Nation, any provision of Title I, not already specified in 25 U.S.C. § 458aaa-15(a), to the extent such provision does not conflict with a provision in Title V, shall be made a part of this Compact and the associated Funding Agreements. The Secretary is obligated to include such provision at the option of the Nation. If such provision is incorporated it shall have the same force and effect as if it were set out in full in Title V. In the event the Nation requests such incorporation at the negotiation stage of this Compact or a Funding Agreement, such incorporation shall be deemed effective immediately and shall control the negotiation and resulting Compact and Funding Agreement. 25 U.S.C. § 458aaa-15(b).

**SECTION 5.17 — PURCHASES FROM THE INDIAN HEALTH SERVICE.** With respect to functions transferred by the Indian Health Service to the Nation under this Compact or Funding Agreement, the Indian Health Service shall provide goods and services to the Nation, on a

**COMPACT BETWEEN THE CHEROKEE NATION AND THE UNITED STATES OF AMERICA  
EXECUTED JUNE 30, 1993 AND AMENDED AND RESTATED EFFECTIVE OCTOBER 1, 2005**

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reimbursable basis, including payment in advance with subsequent adjustment. The reimbursements received from those goods and services, along with the funds received from the Nation pursuant to Title V, may be credited to the same or subsequent appropriation account which provided the funding, such amounts to remain available until expended. 25 U.S.C. § 458aaa-7(f).

**ARTICLE 6 — ATTACHMENTS**

**SECTION 6.1 – RESOLUTIONS.** Resolutions of the Council of the Cherokee Nation No. 11-93, dated February 13, 1993, and No. 15-06, dated March 17, 2006, are attached respectively as Exhibits A and B.

**SECTION 6.2 – FUNDING AGREEMENT.** Each Funding Agreement entered into between the Secretary of Health and Human Services, represented by the Director of the Indian Health Service, and the Nation shall be governed by this Compact. Each Funding Agreement entered into pursuant to this Compact shall be attached hereto and incorporated by reference as Exhibit C.

**COMPACT BETWEEN THE CHEROKEE NATION AND THE UNITED STATES OF AMERICA  
EXECUTED JUNE 30, 1993 AND AMENDED AND RESTATED EFFECTIVE OCTOBER 1, 2005**

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**UNITED STATES OF AMERICA  
SECRETARY OF HEALTH AND HUMAN SERVICES**

BY: Mary Ann Stanton  
for **DIRECTOR, INDIAN HEALTH SERVICE**

DATE: 3/29/06

**CHEROKEE NATION**

BY: [Signature]  
**CHAD SMITH  
PRINCIPAL CHIEF**

03-06-2006

DATE: \_\_\_\_\_

Committee: Health Committee  
Date: 2-3-06 Committee Date: 2-14-06

Author: Melissa Gower  
Sponsor: Joe Crittenden

RESOLUTION NO. 15-06

## COUNCIL OF THE CHEROKEE NATION

### A RESOLUTION REAFFIRMING THE AUTHORIZATION OF A SELF-GOVERNANCE COMPACT WITH THE UNITED STATES OF AMERICA, HEALTH AND HUMAN SERVICES, INDIAN HEALTH SERVICE

**WHEREAS**, the Cherokee Nation since time immemorial has exercised the sovereign rights of self-government in behalf of the Cherokee people;

**WHEREAS**, the Cherokee Nation is a federally recognized Indian Nation with a historic and continual government to government relationship with the United States of America;

**WHEREAS**, Resolution Number 11-93, approved on February 13, 1993, first authorized the Principal Chief to enter a self-governance compact and annual funding agreements with the Indian Health Service under the Indian Self-Determination and Education Assistance Act, P.L. 93-638 as amended;

**WHEREAS**, the U.S. Congress has found that the tribal right of self-government flows from the inherent sovereignty of Indian tribes and nations; and that the United States recognizes a special government-to-government relationship with Indian tribes, including the right of the Indian tribes to self-government, as reflected in the Constitution, treaties, Federal statutes, and the course of dealings of the United States with Indian tribes;

**WHEREAS**, self-governance has authorized the Nation to plan, conduct, consolidate, administer, and receive funding for all programs, services, functions and activities that were previously carried out by the Secretary of Health and Human Services on behalf of the Cherokee Nation;

**WHEREAS**, the Nation has found that self-governance is an efficient and effective means of achieving control and direction of the health and related services of the Indian Health Service, and considers the self-governance initiative highly successful;

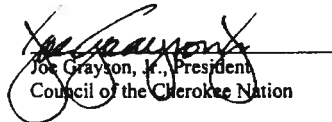
**WHEREAS**, since Resolution Number 11-93, several amendments have been made to the Indian Self-Determination and Education Assistance Act, and the self-governance initiative has been established as permanent federal authority, making it necessary for the Nation to revise and restate the Compact of Self-Governance with the United States.

**BE IT RESOLVED BY THE CHEROKEE NATION**, that the Council of the Cherokee Nation fully supports and endorses the continuation of the Nation's self-governance, reaffirms its previous authorization of Resolution Number 11-93, and authorizes the Principal Chief or his/her designee to execute an amended and restated Compact of Self-Governance with the United States Health and Human Services, Indian Health Service; and


**BE IT FURTHER RESOLVED BY THE CHEROKEE NATION**, that the Principal Chief or his/her designee is hereby authorized to negotiate and execute each associated funding agreement to operate programs, services, functions and activities of the Indian Health Service as authorized by the Compact.

### CERTIFICATION


The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 13<sup>th</sup> day of March, 2006, having 13 members present, constituting a quorum, by the vote of 13 yea; 0 nay; 0 abstaining.

  
Joe Grayson, Jr., President  
Council of the Cherokee Nation


ATTEST:

  
Don Garvin, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 17th day of MARCH, 2006.

  
Chadwick Smith, Principal Chief  
Cherokee Nation

ATTEST:

  
Callie Catcher, Secretary/Treasurer  
Cherokee Nation



RESOLUTION NO. 11-93

COUNCIL OF THE CHEROKEE NATION

**AUTHORIZING THE SUBMISSION OF A TRIBAL SELF-GOVERNANCE COMPACT  
AND ANNUAL FUNDING AGREEMENT TO ENHANCE THE ABILITY OF THE  
CHEROKEE NATION TO EFFECTIVELY PLAN AND DELIVER HEALTH CARE  
SERVICES**

WHEREAS, the Cherokee Nation since time immemorial has exercised the sovereign rights of self-government in behalf of the Cherokee people; and

WHEREAS, the Cherokee Nation is a federally recognized Indian Nation with a historic and continual government to government relationship with the United States of America; and

WHEREAS, the Cherokee Nation will submit a self-governance compact and annual funding agreement, under the authority of Title III of Public Law 93-638, as amended by Public Law 100-472, and further enacted by Public Law 102-573, to include all existing IHS funded programs contracted from the Indian Health Service.

WHEREAS, the Cherokee Nation wishes to take full advantage of federal legislation and that this will not preclude nor promote any additional self-governance activities such as, inpatient services, etc.

WHEREAS, the Cherokee Nation by virtue of funds obtained from this compact, can improve management of all the above stated programs and provide more efficient health care.


NOW THEREFORE BE IT RESOLVED, that the Council of the Cherokee Nation does fully support and endorse this request for a self-governance compact and annual funding agreement under the authority of Public Law 93-638, as amended by Public Law 100-472. The proposed effective date for this compact is July 1, 1993.

BE IT FURTHER RESOLVED, that the Principal Chief and/or her designee is authorized to sign necessary papers to complete and execute this grant proposal.


**CERTIFICATION**

The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 13TH day of FEBRUARY, 1993, having 13 members present, constituting a quorum, by the vote of 13 yea; 0 nay; 0 abstaining.

ATTEST:

  
Troy Wayne Poteete, Secretary  
Cherokee Nation Tribal Council

  
John A. Ketcher, President  
Council of the Cherokee Nation

  
Wilma F. Mankiller  
Principal Chief

Approved this 13TH day of FEBRUARY, 1993.

ATTEST:

  
Tommy Thompson, Secretary-Treasurer