



**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
ARIZONA DEPARTMENT OF HEALTH SERVICES (ADHS)  
AND  
The Colorado River Indian Tribes (TRIBAL CONTRACTOR)  
FOR  
BEHAVIORAL HEALTH SERVICES  
INTERGOVERNMENTAL AGREEMENT NO. HG532008**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year specified below.

**Colorado River Indian Tribes (Tribal Contractor)**

**Arizona Department of Health Services (ADHS)**

*Daniel Eddy, Jr.*

*Jon Medwin*

Signature

Signature

Daniel Eddy, Jr.

JON MEDWIN

Typed Name

Typed Name

Chairman, Colorado River Indian Tribes

PROCUREMENT ADMINISTRATOR

Title

Title

17 June 2004

6/23/04

Date

Date

In accordance with the Tribal Contractor's Constitution and By-Laws, this Agreement has been reviewed by the undersigned who has determined that this Agreement is in the appropriate form and is within the inherent power and authority granted to the Tribal Contractor.

In accordance with A.R.S. §11-952, this Agreement has been reviewed by the undersigned who has determined that this Agreement is in the appropriate form and is within the power and authority granted to ADHS under A.R.S. §§ 36-104, 36-3401 et seq.

Dated this 23 day of June, 2004

Dated this 25th day of June, 2004

Effective Date: \_\_\_\_\_, 2004

*Christy L. Gray*

*Robert J. Sam*

Legal Counsel for the Tribal Contractor

Assistant Attorney General for ADHS

Secretary of State filing information:

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*Janice K. Brewer*  
Secretary of State

By: *Darryl Greenwald*

## TERMS AND CONDITIONS

WHEREAS the ADHS is duly authorized to execute and administer agreements under Arizona Revised Statutes Sections 36-104, 36-3401 et seq; and

WHEREAS the Tribal Contractor is duly authorized to execute and administer agreements under its Constitution and By-Laws; and

WHEREAS the ADHS and the Tribal Contractor are authorized by A.R.S. § 36-104, 36-3401 et seq and the Tribal Contractor's Constitution and By-Laws to enter into agreements for the joint exercise of any power common to the contracting parties as to governmental functions necessary to the public health, safety and welfare, and the proprietary functions of such public agencies;

WHEREAS, the ADHS and the Tribal Contractor endeavor to provide accessible, timely behavioral health services tailored to the person and family in accordance with best practices, provided in the most appropriate setting, designed in collaboration with the person, family and others to achieve functional outcomes; and

WHEREAS the ADHS desires that the Tribal Contractor provide case management services and the Tribal Contractor has agreed to provide case management services pursuant to the terms and conditions contained herein;

THEREFORE the ADHS and the Tribal Contractor agree as follows:

### Definition of Terms

"ADHS" means the Arizona Department of Health Services.

"Agreement" means the Intergovernmental Agreement between the Arizona Department of Health Services and the Colorado River Indian Tribes.

"Amendment" means a written document signed by ADHS that is issued for the purpose of making changes in the Agreement.

"Appeal" means a request for a review of an action in accordance with 42 CFR 438.400, and for a person with a serious mental illness, an appeal of an SMI eligibility determination; decisions regarding eligibility for behavioral health services, including Title XIX/XXI services, fees, and waivers; assessments and further evaluations; service and treatment plans and planning decisions; and the implementation of those decisions.

"Behavioral Health Services" means those services listed in the ADHS Behavioral Health Covered Services Guide.

"Complaint" means any expression of dissatisfaction with behavioral health services other than an appeal.

"Covered Services" means those services listed in the ADHS Covered Behavioral Health Services Guide.

"DBHS" means the Division of Behavioral Health Services within the Arizona Department of Health Services.

"Materials" means all property including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

"Medically Necessary Covered Services" means those covered services provided by qualified service providers within their scope of practice to prevent disease, disability, and other adverse health conditions or their progression or to prolong life.

"Non-Title XIX/XXI Person" means an individual who needs or may be at risk of needing covered services, but does not meet Federal and State requirements for Title XIX or Title XXI eligibility.

## TERMS AND CONDITIONS

“Non-Title XIX/XXI Funds” means fixed, non-capitated funds State appropriations, counties and other funds, which are used for services to Non-Title XIX/XXI eligible persons.

“Party” or “Parties” means the Arizona Department of Health Services or the Colorado River Indian Tribes.

“Provider” means an organization or behavioral health professional that provides behavioral health services to enrolled persons.

“Serious Mental Illness” means a condition of persons who are eighteen years of age or older and who, as a result of a mental disorder as defined in A.R.S. 36-501, exhibit emotional or behavioral functioning which is so impaired as to interfere substantially with their capacity to remain in the community without supportive treatment or service of a long term or indefinite duration. In these persons mental disability is severe and persistent, resulting in long term limitation of their functional capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment and recreation.

“Service Plan” means a written description of the covered behavioral health services and other informal supports that have been identified through the assessment process that will assist the person to meet her/her personal goals.

“SMI Grievance” means a written grievance regarding an act, omission, condition or violation of a right of an individual with a serious mental illness.

“State” means the State of Arizona or the agency responsible for implementing this Agreement, the Arizona Department of Health Services.

“Subvention” means fixed, non-capitated source of funds, including CMHS and SAPT funding, State appropriations, county and other funds, which are used for non-entitled populations.

“Tribal Contractor” means the Colorado River Indian Tribes.

# TERMS AND CONDITIONS

## I. Terms and Conditions

### A. Interpretation of the Agreement

1. *Arizona Law.* Arizona law applies to this Agreement.
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.
3. *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.
4. *Entire Agreement.* This Agreement shall constitute the entire Agreement between the parties, and supersedes all other previous understandings, oral or written.
5. *No Parol 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. *No Waiver of Immunity.* Nothing contained herein shall be construed to affect or be deemed a waiver of immunity from action, counterclaim, suit, etc., by the Colorado River Indian Tribes.

### B. Administration and Operation of the Agreement

1. *Records and Audit.* Under A.R.S. § 35-214 and § 35-215, the Tribal Contractor shall retain all data and other records relating to the acquisition and performance of the Agreement for a period of three years after the completion of the Agreement. All records related to pending litigation shall be retained until the litigation is completed. All records shall be subject to inspection, copying and audit by the State at reasonable times. Upon request, the Tribal Contractor shall produce a legible copy of any or all such records.
2. *Non-Discrimination.* The Tribal Contractor shall comply with the Indian Civil Rights Act of 1968. It shall be permissible for the Tribal Contractor to engage in Indian preference in hiring. Where applicable, the Tribal Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act; and Federal and State Executive Orders numbers 11246 and 99-4, respectively, which mandate that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. Where applicable, the Tribal Contractor shall comply with the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act of 1992 which prohibit discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap/disability. Where applicable, the Tribal Contractor shall comply with Title VI of the Civil Rights Act of 1964, which prohibits the denial of benefits of, or participation in, covered services on the basis of race, color, or national origin. Where applicable, the Tribal Contractor shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act of 1992 which prohibit discrimination on the basis of handicap/disability, in providing covered services.
3. *Notices.*

Notices required in this Agreement from ADHS to the Tribal Contractor shall be made to:

Name: Daniel Eddy, Jr.  
Tribal Chairman  
Address: Colorado River Indian Tribes  
Route 1  
Box 23-B  
Parker, AZ 85344

## TERMS AND CONDITIONS

Notices required in this Agreement from the Tribal Contractor to ADHS shall be made to:

Name: Leslie Schwalbe, Deputy Director  
Address: Arizona Department of Health Services  
Division of Behavioral Health Services  
150 N. 18<sup>th</sup> Avenue Suite 200  
Phoenix Arizona 85007-3240

4. *Request for Information.* The ADHS may, at any time during the term of the Agreement, request from the Tribal Contractor financial or other information related to the Tribal Contractor's performance or compliance under this Agreement. Upon receipt of such request for information, the Tribal Contractor shall provide complete information as requested no later than thirty (30) days after the receipt of the request unless, otherwise specified in the request itself.

5. *Qualified Staff.* The Tribal Contractor shall maintain sufficient qualified staff to perform Agreement terms, conditions, and scope of work.

### C. Agreement Changes

1. *Amendments.* The ADHS and the Tribal Contractor may re-negotiate any provision(s) of this Agreement. Any change to this Agreement shall be carried out in accordance with the following: A written amendment signed by both parties to this Agreement shall be required whenever there is a change in a reimbursement rate negotiated by the ADHS and the Tribal Contractor; whenever there is a change in services provided under this Agreement, the service provision methodology or the level of service as defined in the Scope of Work; or for any other change in the terms and conditions in this Agreement which the ADHS deems substantial. When the ADHS issues an amendment to modify the Agreement, the provisions of such amendment shall be deemed to have been accepted sixty (60) days after the date of mailing by the ADHS, even if the amendment has not been signed by the Tribal Contractor, unless within that time the Tribal Contractor notifies the ADHS in writing that it refuses to sign the amendment.

2. *Assignment and Delegation.* The Tribal Contractor shall not assign any right nor delegate any duty under this Agreement without the prior written approval of the ADHS. The Agreement is voidable and subject to immediate cancellation by the ADHS upon the Tribal Contractor assigning rights or obligations under the Agreement without prior written approval of the ADHS.

### D. Risks and Liability

1. *Insurance.* Each party is self-insured and is responsible for its own negligence. The Tribal Contractor at the execution of this Agreement and when the certificate is renewed shall submit a complete and valid certificate of insurance to ADHS.

2. *Indemnification.* Neither party to this Agreement agrees to indemnify the other party or hold harmless the other party from liability. However, if the common law or a statute provides for either a right to indemnify and/or a right to contribution to any party to this Agreement, then the right to pursue one or both of these remedies is preserved.

3. *Force Majeure.*

- a. 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-interventions-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.

## TERMS AND CONDITIONS

- b. 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.
- c. 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.

### **E. Warranties**

1. *Compliance With Applicable Laws.* The ADHS and the Tribal Contractor shall comply with all applicable Federal, Tribal, and State laws, rules, regulations, standards, and Executive orders without limitation to those designated herein. Applicable laws and regulations of the State and Federal government shall govern the rights of the parties with respect to the performance.

### **F. State's Remedies**

1. If the Tribal Contractor violates any federal/state law; Federal or State laws, rules and regulations; ADHS policies and procedures; or this Agreement, the ADHS may refuse to renew, or terminate this Agreement in accordance with the terms of this Agreement and applicable law.

2. If the ADHS in good faith has reason to believe that the Tribal Contractor does not intend to, or is unable to perform or continue performing under this Agreement, the ADHS may demand in writing that the Tribal Contractor give a written assurance of intent to perform. Failure by the Tribal Contractor to provide written assurance within the number of days specified in the demand may, at the ADHS' option, be the basis for terminating the Agreement or other rights and remedies available by law or provided by the Agreement.

3. The ADHS shall be entitled to offset against any sums due the Tribal Contractor, any expenses or costs incurred by the ADHS, or damages assessed by the ADHS concerning the Tribal Contractor's non-conforming performance or failure to perform the Agreement.

4. The rights and the remedies of the State under this Agreement are not exclusive.

### **G. Agreement Termination.**

1. This Agreement may be terminated without cause upon sixty (60) days written notice by either party during the term of this Agreement or may be terminated pursuant to a subsequent superseding agreement between the parties. The ADHS has the right to terminate this Agreement upon twenty-four (24 hour) notice when the ADHS deems that the health, welfare or safety of enrolled persons is endangered. The State may cancel this Agreement as provided in A.R.S. § 38-511.

2. In the event the Agreement is terminated for any reason, or expires, the Tribal Contractor shall assist ADHS in the transition of its enrolled persons to other contractors. In addition, ADHS reserves the right to extend the term of the Agreement on a month-to-month basis to assist in any transition of enrolled persons. The Tribal Contractor shall continue to provide all necessary services until the transition of all enrolled persons is completed and all other requirements of this Agreement are satisfied. The Tribal Contractor shall be responsible for providing all reports set forth in this Agreement and necessary for the transition process and shall be responsible for the notification to enrolled persons.

3. The Dispute provisions of this Agreement shall exclusively govern any dispute with respect to termination of this Agreement.

## TERMS AND CONDITIONS

4. Any funds, advanced to Tribal Contractor for coverage of enrolled persons for periods after the date of termination, shall be returned to ADHS within 30 days of termination of the Agreement, unless the funds were demonstrably used for transition purposes according to Section I.G.2. of this Agreement.

### H. Disputes

1. *Informal Resolution.* Whenever a dispute arises regarding the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination of this Agreement, the parties shall attempt to first resolve the dispute informally at an administrative level prior to resorting to arbitration.

2. *Arbitration.* In the event a dispute cannot be resolved informally at an administrative level, either party may request that the dispute be arbitrated pursuant to this procedure set forth herein. Although consent to arbitration under this Agreement shall not be deemed a waiver of either party's sovereign immunity, neither party shall assert sovereign immunity as a defense to arbitration under this Agreement.

#### a. Procedure

- 1) Either party may demand such arbitration in writing, which demand shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter of controversy.
- 2) Within twenty (20) days after such demand, the other party shall name its arbitrator, or in default of such naming, such arbitrator shall be named by the American Arbitration Association, and the two arbitrators so selected shall name a third arbitrator within twenty (20) days or, in lieu of such agreement on a third arbitrator by the two arbitrators so appointed, a third arbitrator shall be appointed by the Federal District Court for the District of Arizona. In the event said Court fails to appoint a third arbitrator within thirty (30) days of the request therefore, the appointment shall be made by the American Arbitration Association.
- 3) The arbitration costs and expenses of each party shall be borne by that party and all arbitrators' fees and other expenses shall be borne equally by both parties.
- 4) The arbitration hearing shall be held at such time and place as designated by the arbitrators on at least twenty (20) days written notice to the parties.
- 5) An award rendered by a majority of the arbitrators appointed pursuant to this Agreement shall be final and binding on all parties to the proceeding, and the parties hereto agree to be bound by such award.
- 6) As to any procedures regarding the conduct of the arbitration that are not specified either in this Agreement or in another written agreement signed in advance of the hearing, the parties shall follow the Commercial Arbitration Rules of the American Arbitration Association.

#### b. Arbitration as Bar to Suit

- 1) The parties stipulate that the arbitration provisions of the Agreement shall be a complete defense to any suit, action, or proceeding instituted in any Federal, State, or Tribal Court or before an administrative tribunal with respect to any controversy or dispute arising during the period of this Agreement and which is arbitrable as set forth in this Agreement.
- 2) The arbitration provisions of this Agreement shall, with respect to such controversy or dispute, survive the termination or expiration of this Agreement.

c. Nothing contained in this Agreement shall be deemed to give the arbitrators any authority, power, right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

## TERMS AND CONDITIONS

### d. Enforcement

- 1) Failure by either party to arbitrate any dispute pursuant to the procedure set forth herein when a demand to do so has been made by the other party shall amount to the material breach of this Agreement and shall entitle the party who demanded arbitration to cease performance of any obligation set forth in this Agreement at the sole discretion of that party.
- 2) Failure of either party to comply with an arbitration award shall amount to the material breach of this Agreement and shall entitle the other party to cease performance of any obligation set forth in this Agreement.

### I. Term of Agreement

1. *Term of Agreement.* The term of this Agreement shall commence on the date signed by the Secretary of State and shall remain in effect for a period of three (3) years covering the time span of July 1, 2003 through June 30, 2006, unless terminated, canceled, renewed or extended as otherwise provided herein.

2. *Agreement Renewal.* The Tribal Contractor agrees that the ADHS and the Tribal Contractor shall have the right to renew the Agreement annually for up to two (2) one year periods or a portion thereof. In the event that this right is exercised, all terms, conditions and provisions of the original agreement shall remain the same and apply during the renewal period unless modified through an amendment.

### J. Other Provisions

1. *Dissemination of Information.* Upon request, the Tribal Contractor shall assist ADHS in the dissemination of information prepared by the ADHS to its enrolled persons. All advertisements, publications and printed materials that are produced by the Tribal Contractor and refer to covered services shall state that such services are funded under Agreement with ADHS.

2. *Certification of Compliance - Anti-kickback.* By signing this Agreement, the Tribal Contractor certifies that it has not engaged in any violation of the Medicare Anti-Kickback statute (42 USC 132a-7b) or the "Stark I" and "Stark II" laws governing related-entity referrals (PL 101-239 and PL 101-432) and compensation therefrom.

3. *Disclosure of Confidential Information.* The Tribal Contractor shall observe and abide by all applicable State, Tribal, and Federal statutes and regulations regarding use or disclosure of information, including, but not limited to, information concerning enrolled persons or applicants for covered services.

4. *Ownership of Property.*

#### a. Information and Data

- 1) Any materials, including reports, computer programs and other deliverables, created under this Agreement are the sole property of the State. The Tribal Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Tribal Contractor shall not use or release these materials without the prior written consent of the ADHS.
  - 2) The Tribal Contractor agrees to give recognition to the ADHS for its support of the program when publishing program material or releasing program related public information.
  - 3) In recognition of tribal sovereignty, publication or release of any of the Tribal Contractor's specific reports and data shall be subject to the Tribal Contractor's review and approval.
- b. Any property, personal or intellectual, created under this Agreement or purchased with funds provided under the Agreement, are the sole property of the State. Upon the termination or expiration of this Agreement, all property created or purchased using funds provided under the Agreement shall be promptly

## TERMS AND CONDITIONS

transferred to the ADHS, and the Tribal Contractor shall promptly execute any documents necessary to transfer title to such property.

5. *Accreditation/Credentialing.* The Tribal Contractor shall provide covered services in accordance with any and all applicable professional accreditation standards. The Tribal Contractor shall obtain and maintain all applicable licenses, permits and authority required to provide covered services.

6. *Fingerprint and certification requirements/juvenile services.* The fingerprint and certification requirements listed in this section apply to this Agreement to the extent it pertains to services to juveniles.

- a. The Tribal Contractor shall ensure that all paid and unpaid personnel who are required or are allowed to provide services directly to juveniles have met all fingerprint and certification requirements of A.R.S. §36-425.03 prior to providing such services.
- b. The Tribal Contractor shall ensure and verify that those employees who qualify only for a restricted certification shall be supervised when providing services directly to juveniles.

## SCOPE OF WORK

### II. Scope of Work

#### A. Service Delivery.

Non-Title XIX/XXI persons who are affiliated with the Tribal Contractor by virtue of being federally-recognized Tribal members, and who live on the Tribal Contractor's reservation and who are assessed as needing covered behavioral health services shall be provided covered behavioral health services by the Tribal Contractor in accordance with the ADHS/DBHS Covered Services Guide.

Service delivery to persons with Serious Mental Illness shall include:

- i. Provide diagnostic psychological testing by a doctoral level licensed psychologist, when available.
- ii. Develop appropriate and timely treatment/service plans for SMI individuals and families served. The comprehensive treatment/service plan will outline the problem(s), need(s), and the planned service response for each client. The SMI client(s) is/are encouraged to participate to the maximum extent possible in the planning process and the plans are developed with the client's involvement. Treatment planning and provision of services are guided by assessment findings. The most appropriate, least restrictive or intrusive alternatives, which best meet client needs, are selected. Treatment planning is designed and implemented to provide service in a manner that strengthens and supports family relationships, and empowers and enables children, adolescents, significant others, parents, and family members to assume their roles.
- iii. Make referrals to various community agencies for more intensive care when necessary.
- iv. Exercise caution and due regard for clients rights to self-determination and protection from harm.
- v. Termination from treatment reflects an orderly process that is carried out between BHS and the client in which necessary aftercare plans are developed, when indicated.

Service delivery to persons with Substance Abuse conditions shall include:

- i. Coordinate services through the Colorado River Indian Tribes Alcohol and Substance Abuse Program (ASAP).
- ii. Provide psychological evaluations when indicated on behalf of ASAP.

Service delivery to children and their families shall include:

- i. Provide both direct and indirect mental health services, including individual, group, marital, and family counseling, crisis intervention, inpatient care, case management, and case-oriented consultation.
- ii. Provide face-to-face crisis intervention.
- iii. Establish and/or maintain mental health records.
- iv. Make referrals to various community facilities for more intensive care when necessary.

## SCOPE OF WORK

- v. Provide case-oriented consultation to tribal law enforcement, courts, child protection services, social services, and the U.S. Public Health Service Parker Indian Health Center, Parker, AZ.
- vi. Provide mental health services and assessments or evaluations to patients in the Parker Indian Health Center inpatient unit.
- vii. Provide in-service workshops to Parker Indian Health Center staff on mental health issues related to providing medical care.
- viii. Provide assessments or evaluations, when appropriate, of incarcerated individuals at the Colorado River Indian Tribes jail or Detention Center.
- ix. Provide adjunct services to and assessments or evaluations, when appropriate, of individuals enrolled in the Parker Unified School District, Parker, AZ.
- x. Provide consultation to school psychologists, teachers, and local school administrative personnel on mental health problems.
- xi. Provide adjunct services to and assessments or evaluations, when appropriate, of individuals enrolled at Parker/Excel (a Regional Behavioral Health Agency) and Yuma/Excel.
- xii. Provide adjunct services to and assessments or evaluations of individuals enrolled at Arizona Department of Economic Security, Division of Developmental Disabilities, Parker, AZ.

Prevention Services delivery shall include:

- i. The prevention branch of Colorado River Indian Tribes BHS is responsible for implementing such activities and will inform the surrounding community about the availability of such resources.
- ii. Provide direct consultation services to the Parker Indian Health Center staff.
- iii. Provide consultation services on mental health issues to tribal, county, state and Federal agencies.
- iv. Network with resources to implement primary and secondary prevention activities in order to address mental health concerns on a system-wide level.
- v. Design and implement various workshops for tribal agencies when appropriate.
- vi. Provide policy-oriented consultation to various tribal departments with regard to mental health related issues.
- vii. Provide on-site consultation and education services to various community agencies as requested and appropriate.
- viii. Inform the community about services available through Colorado River Indian Tribes BHS.
- ix. Develop conferences on mental health issues.

Title XIX/XXI persons who request covered behavioral health services shall be referred to the Regional Behavioral Health Authority for assessment of the need for covered behavioral health services.

## SCOPE OF WORK

On-reservation providers that deliver covered behavioral health services must be certified by CMS (Center for Medicaid/Medicare Services). Off-reservation providers that deliver covered behavioral health services must be either licensed by the ADHS Office of Behavioral Health Licensure, or certified by the ADHS/DBHS, and operating within their scope of practice.

### **B. Administrative Functions.**

#### **i. Eligibility and Scope of Services.**

The Tribal Contractor shall assess the eligibility of Non-Title XIX/XXI persons referred for or requesting covered behavioral health services in accordance with the requirements of the ADHS/DBHS Provider Manual and the ADHS/DBHS Program Support Procedures Manual.

The Tribal Contractor shall be responsible for the provision of covered behavioral health services by practitioners within their scope of practice to Non-Title XIX/XXI eligible/enrolled children and adults in accordance with Federal and State laws, rules, and regulations. The Tribal Contractor shall use Non-Title XIX/XXI funding, subject to availability, to deliver Non-Title XIX/XXI covered behavioral health services to Non-Title XIX/XXI enrolled persons for Non-Title XIX/XXI covered services.

The Tribal Contractor shall ensure that covered behavioral health services are sufficient in amount, duration or scope to reasonably be expected to achieve the purpose for which the services are furnished. Covered behavioral health services must be related to the enrolled person's ability: to achieve age-appropriate growth and development; to attain, maintain or regain functional status; and are sufficient in amount or scope to reasonably be expected to achieve the purpose for which the services are furnished.

#### **ii. Informational Materials.**

Informational material intended for distribution to enrolled Non-Title XIX/XXI persons, and prepared by the Tribal Contractor, shall be approved by the ADHS/DBHS, in writing, prior to distribution to enrolled Non-Title XIX/XXI persons.

#### **iii. Complaints, SMI Grievances, Member Appeals and Provider Appeals.**

ADHS/DBHS shall provide the appropriate personnel to establish, implement and maintain the necessary functions of the SMI Grievance, Member Appeal and Provider Appeal processes. The Tribal Contractor shall provide the appropriate personnel to establish, implement and maintain the necessary functions of the complaint process for enrolled persons.

The Tribal Contractor shall endeavor to informally resolve complaints whenever possible; however, the Tribal Contractor shall not prohibit or interfere with an enrolled person's or provider's right to use the SMI grievance and appeal processes.

The Tribal Contractor shall have in place a complaint process for members in accordance with all applicable state and federal laws including but not limited to 42 CFR 438.1 et seq, 45 CFR parts 160 –164, 42 CFR 431.200 et seq., 42 CFR 456.200 et seq., A.A.C. (Arizona Administrative Code) R9-22-518 (A), R9-22-802, R9-22-804, R9-21 Article 4, and ADHS/DBHS Policies and Procedures and the ADHS/DBHS Provider Manual.

## SCOPE OF WORK

### iv. **Corrective Action.**

The Tribal Contractor shall implement corrective action to bring performance into compliance with ADHS/DBHS requirements, in accordance with the corrective action plan and timelines agreed to by the Tribal Contractor and the ADHS/DBHS. Corrective action plans may be developed by the ADHS at its discretion. In addition to any other remedies available to ADHS, the ADHS may impose financial sanctions against the Tribal Contractor for breaches of the Agreement by the Tribal Contractor or its subcontracted providers.

## FINANCIAL PROVISIONS

### III. FINANCIAL PROVISIONS

#### A. FUNDING

1. Payments shall be made by the ADHS/DBHS to the Tribal Contractor in compliance with A.R.S. Titles 35 and 41. Payments are conditioned upon the rights and obligations of this Agreement and the availability to the ADHS/DBHS of funds authorized and appropriated by the State legislature for expenditure in the manner and for the purposes stated in this Agreement. The ADHS/DBHS or the State shall not be liable for any purchase(s) entered into by the Tribal Contractor in anticipation of such funding.
2. Subvention: (Non Title XIX/XXI funds). The Non-Title XIX/XXI Allocation Schedule outlines the specific funding sources by program. Subject to available funding, the ADHS shall pay the Tribal Contractor Non-Title XIX/XXI funds in 12 monthly installments annually, within the first 10 business days of each succeeding month. These funds will be used for delivery of services for the programs outlined in the ADHS Non-Title XIX/XXI Allocation Schedule to Non-Title XIX/XXI eligible populations. ADHS/DBHS reserves the right to re-evaluate this schedule periodically. If at the time of the re-evaluation the Tribal Contractor has not expended at least 88% of the subvention funds advanced in any particular allocation, ADHS/DBHS may, at its discretion, reduce the remaining amount of remaining fiscal year allocations to match estimated expenditures. Subvention funds shall be paid on a monthly basis not later than the 10<sup>th</sup> working day of each month.
3. Payments made by the ADHS/DBHS to the Tribal Contractor pursuant to the Agreement are conditioned upon the availability to the ADHS/DBHS of funds authorized for expenditure in the manner and for the purposes provided herein. Neither the ADHS/DBHS nor the Tribal Contractor shall be liable for any purchases in anticipation of funding.
4. Payments made by the ADHS/DBHS to the Tribal Contractor are conditioned upon receipt by the ADHS/DBHS of applicable timely, accurate and complete reports, documentation and any other information due from the Tribal Contractor, unless written approval waiving such requirement(s) is obtained from the ADHS/DBHS Deputy Director. If the Tribal Contractor is in any matter in default in the performance of any material obligation under the Agreement, or if financial, compliance or performance audit exceptions are identified, the ADHS/DBHS may, at its 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 Tribal Contractor shall have the right to 30 days written notice of the ADHS/DBHS' action in adjusting the amount of payment or withholding payment. Under no circumstances shall the ADHS/DBHS authorize payments that exceed an amount specified in the Agreement without an approved written amendment to the Agreement. The ADHS/DBHS may, at its option, withhold final payment to the Tribal Contractor until all final reports and deliverables are received.
5. The practices, procedures and standards specified in and required by the *Accounting and Auditing Procedures Manual for Arizona Department of Health Services Funded Programs* and any Uniform Financial Reporting Requirements shall be used by the Tribal Contractor in the management, recording and reporting of Agreement funds by the ADHS/DBHS when performing an Agreement audit.
6. Funding received through this contract shall be retained by the Tribal Contractor to be used for covered behavioral health services. All funding received under this contract, must be maintained in a separate fund (account). The Tribal Contractor should provide ADHS/DBHS with a semi-annual report detailing all activities in this fund (account). Any funds remaining subsequent to fiscal year end shall be used in accordance with this contract within 90 days. For funds not expended within 90 days after fiscal year end, the Tribal Contractor shall present a plan for ADHS/DBHS' approval describing its plan to utilize remaining funds within 180 days of fiscal year end. The following year's revenue may be adjusted if the Tribal Contractor does not provide a reasonable plan to spend remaining funds.

## **FINANCIAL PROVISIONS**

7. The Tribal Contractor shall reimburse the ADHS/DBHS upon request, or the ADHS/DBHS may deduct from future payments to the Tribal Contractor, any amounts determined by the ADHS/DBHS to represent:
  - a. Costs related to Agreement services which have been inaccurately reported by the Tribal Contractor;
  - b. Costs related to Agreement services which have not been provided;
  - c. Costs of Agreement services for which the Tribal Contractor's books, records, and other documents are not sufficient to clearly confirm were used by the Tribal Contractor to provide Agreement services;
  - d. Costs of Agreement services sustained as a financial audit exception; or
  - e. Costs of services which have not been provided in accordance with applicable regulations, laws, policies and this Agreement, to include services which the ADHS/DBHS or AHCCCS has determined not medically necessary.

### **B. FINANCIAL INFORMATION AND FINANCIAL REPORTING**

1. The Tribal Contractor shall have a system to produce complete, timely, reliable and accurate financial records in accordance with the following requirements for financial reporting:
  - a. The Tribal Contractor shall design and implement its financial operations system to ensure compliance with Generally Accepted Accounting Principles.
  - b. The Tribal Contractor shall file a semi-annual report detailing the Non-Title XIX/XXI Revenues and Expenditures.
  - c. Certification Statement as outlined in the ADHS/DBHS Financial Reporting Guide.
  - d. The Tribal Contractor is required to submit audited Financial Statements prepared in accordance with OMB Circular A-133 for Colorado River Indian Tribes within 9 months after the Tribal Contractor's fiscal year.
2. Requests for extension of reporting deadlines shall be submitted in writing and must be received by the ADHS/DBHS prior to the report due date. Approvals for extension are valid only if issued in writing by the ADHS/DBHS.
3. Health Insurance Portability and Accountability Act (HIPAA):

The Tribal Contractor 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 Tribal Contractor by the dates required by the implementing federal regulations.

## ATTACHMENTS

### ATTACHMENT A.

### TRIBAL CONTRACTOR CHART OF DELIVERABLES

The following table is a summary of the periodic reporting requirements for the Tribal Contractor 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 Tribal Contractor's responsibilities in any manner.

REPORT	WHEN DUE	SOURCE/REFERENCE	ADHS CONTACT
Audited Financial Statement per OMB Circular A-133 for Colorado River Indian Tribes	No later than 9 months after the Tribal Contractor's fiscal year end or September 30 <sup>th</sup>	IGA	Office of Financial Review
Semi-Annual report detailing the Non-Title XIX /XXI Revenues and Expenditures	Semi-Annually February 15 <sup>th</sup> and August 15 <sup>th</sup>	ADHS/DBHS Financial Reporting Guide	Office of Financial Review
Certification Statement	Semi-Annually February 15 <sup>th</sup> and August 15 <sup>th</sup>	ADHS/DBHS Financial Reporting Guide	Office of Financial Review
Complete and Valid Certificate of Insurance	Prior to agreement execution and when certificate is renewed	IGA	Office of Financial Review
Data and Records Related to Agreement	Due Upon Request within 60 days	IGA	Bureau of Quality Management and Evaluation
Corrective Action Plans	Due Upon Request	IGA	As indicated in Corrective Action Plan request letter