

ALASKA TRIBAL HEALTH COMPACT

BETWEEN

CERTAIN ALASKA NATIVE TRIBES

AND THE

UNITED STATES OF AMERICA

OCTOBER 1, 1994

—

AMENDED AND RESTATED

OCTOBER 1, 2010

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This Compact of Self-Governance, which under Title III of Public Law No. 93-638, as amended, became effective October 1, 1994, was amended and restated effective October 1, 1995, October 1, 1996, October 1, 1997, October 1, 1998, October 1, 2000, and was further amended and restated in FY 2001, effective October 1, 2000, to conform with Public Law 106-260, Title V of the Indian Self-Determination and Education Assistance Act, as amended (hereinafter Title V), October 1, 2003, October 1, 2006, October 1, 2008, and October 1, 2010 is made and entered into by and between the Secretary of Health and Human Services of the United States of America, represented by the Director of the Indian Health Service, and certain Alaska Native Tribes recognized by the United States acting collectively, and the Alaska Native Tribal Health Consortium, as set forth in Exhibit A. This Compact is entered into under the Title V, which authorizes the Secretary to enter into Compacts and Funding Agreements with the governing bodies of participating Tribal governments. The Secretary has delegated the authority to enter into this Compact and funding agreements to the Director, Indian Health Service (hereinafter IHS). This Compact reflects the United States' special trust responsibility and legal obligations to Indians and Alaska Natives, as stated in 25 U.S.C. section 1602, and the unique tribal cooperation that has developed in Alaska to assure that all Alaska Natives have access to a comprehensive, integrated, and tribally-controlled health care delivery system. The parties are committed to ensuring that the essential statewide functions of the Alaska Native Medical Center in Anchorage remain intact, whether operated by the Indian Health Service, the Alaska Native Tribal Health Consortium or by Alaska Native Tribes recognized by the United States.

WITNESSETH:

WHEREAS, the Alaska Native people have governed themselves and lived in the area known as Alaska since time immemorial;

WHEREAS, federally recognized tribal governments in the State of Alaska

. . . have the same governmental status as other federally acknowledged Indian tribes by virtue of their status as Indian tribes with a government-to-government relationship with the

United States; are entitled to the same protection, immunities, privileges as other acknowledged tribes; have the right, subject to general principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other tribes; and are subject to the same limitations imposed by law on other tribes;

(Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 58 Fed. Reg. 54364 (October 21, 1993));

WHEREAS, for the purposes of ensuring that all Alaska Natives and American Indians in Alaska can receive the services provided by the Federal Government through an Alaska Native provider, the Congress has defined the term, “Indian Tribe,” to mean:

. . . any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. § 450b(e));

WHEREAS, to prioritize between the entities eligible to authorize contracting under the Indian Self-Determination and Education Assistance Act, as amended, the Indian Health Service has established in the Alaska Area the following order of preference:

If there is an Indian Reorganization Act (IRA) Council, and it provides governmental functions for the village, it will be recognized.

If there is no IRA Council, or it does not provide governmental functions, then the traditional village council will be recognized.

If there is no IRA Council and no traditional village council, then the village profit corporation will be recognized.

If there is no IRA Council, no traditional village council, and no village profit corporation, then the regional profit corporation will be recognized for that particular village.

(Alaska Area Guidelines for Tribal Clearances for Indian Self-Determination Contracts, 46 Fed. Reg. 27178);

WHEREAS, the United States of America has recognized certain entities in Alaska as American Indian Tribes for purposes of the Indian Self-Determination and Education Assistance Act (*See 25 U.S.C. § 450b(e); Indian Entities Recognized and Eligible To Receive Services from*

the United States Bureau of Indian Affairs, 58 Fed. Reg. 54364 (October 21, 1993); and *Alaska Area Guidelines for Tribal Clearances for Indian Self-Determination Contracts*, 46 Fed. Reg. 27178, (hereinafter “the Tribes”);

WHEREAS, certain Tribes of Alaska have formed and authorized certain Tribal Organizations and Inter-Tribal Consortia as defined in 25 U.S.C. § 450b(l) and section 501(a)(5) of Title V, for the purpose of providing health care to Alaska Natives and to contract with the Indian Health Service and other federal and non-tribal agencies for such purpose as well as to provide health care to the other residents of their respective service areas, as permitted by section 813 of the Indian Health Care Improvement Act, as amended, or other applicable law;

WHEREAS, the Congress has declared its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, Alaska Native and American Indian Tribes and to the Alaska Native and American Indian people as a whole through the permanent establishment of a meaningful Indian self-governance policy, which will permit an orderly transition from the federal domination of programs for, and services to, Alaska Natives and American Indians to effective and meaningful participation by the Alaska Native and American Indian people in the planning, conduct, and administration of those programs and services; 25 U.S.C. § 458aaa(note);

WHEREAS, the Congress has declared its commitment to strengthening the government-to-government relationship and to supporting and assisting Alaska Native and American Indian Tribes in the orderly transition from the federal domination of programs and services to provide Alaska Native and American 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, 25 U.S.C. § 458aaa(note);

WHEREAS, Federal health services to maintain and improve the health of the Indians and Alaska Natives are consonant with and required by the Federal Government's historical and unique legal relationship with, and resulting responsibility to, the American Indian and Alaska Native people, 25 U.S.C. §§ 1601(1), (2);

WHEREAS, in accordance with 25 U.S.C. § 1601(2) a major national goal of the United States is to provide resources, processes and structures that will enable American Indians and Alaska Natives to obtain the quality and quantity of health care services and opportunities that will eradicate health disparities between Indian and Alaska Native people and the general population of the United States;

WHEREAS, the Congress has declared that it is the policy of the United States as stated in 25 U.S.C. § 1602, in fulfillment of its special trust responsibilities and legal obligations to the American Indian and Alaska Native people, to ensure the highest possible health status for Indians and Alaska Natives and to provide all resources necessary to effect that policy; to raise the health status of Indians to at least the levels set forth in the goals contained within the Healthy People 2010 initiative or successor objectives; and also the ensure maximum Indian and Alaska Native participation in the direction of health care services so as to render the person administering such services and the services themselves more responsive to the needs and desires of Indian and Alaska Native communities;

WHEREAS, for the purposes of this Compact,

“ANTHC” shall mean only the Alaska Native Tribal Health Consortium;

“Co-Signer” shall mean all Tribes and tribal organizations or Inter-Tribal Consortia, including the ANTHC, participating in the Compact;

“Signatory Tribe(s)” shall mean all Tribes participating in the Compact either directly or through a tribal organization or Inter-Tribal Consortium that has been authorized to participate by resolution;

“Tribal Co-Signer” shall mean only those Tribes, tribal organizations and Inter-Tribal Consortia authorized by resolution of a Tribe, as defined in 25 U.S.C. § 450b(l) and sections 501(a)(5) and (b) of Title V, to participate in the Compact and shall not include the ANTHC; and

WHEREAS, under authority from the Tribes, certain Tribal Organizations and Inter-Tribal Consortia in Alaska have provided health services for many years under self-determination contracts with the Indian Health Service and have been recognized by the Indian Health Service as tribally-operated service units;

WHEREAS, pursuant to section 325 of P.L. 105-83, the Alaska Native Tribal Health Consortium (herein “ANTHC”), a tribal organization and Inter-tribal Consortium, as defined in section 501(a)(5) of Title V, was organized and is controlled by the Alaska Native tribes and tribal organizations which are represented on its Board of Directors;

WHEREAS, Tribes, Tribal Organizations and Inter-Tribal Consortia throughout Alaska are reliant on the services to be provided by the ANTHC;

WHEREAS, participation by the ANTHC in the Alaska Tribal Health Compact promotes the commitment of Alaska Native Tribes, Tribal Organizations and Inter-Tribal Consortia to maintain the unique tribal cooperation that has developed in Alaska to assure that all Alaska Natives have access to a comprehensive, integrated, organized, tribally controlled health care delivery system in which Alaska tribal health providers participate in numerous joint activities including utilization review and provide their health services in a clinically integrated care setting in which individuals typically receive health care from more than one of these Alaska tribal providers;

WHEREAS, in furtherance of the federal policy of Alaska Native and American Indian tribal self-determination and self-governance, Congress has directed the Secretary of Health and Human Services (herein the “Secretary”) to carry out the Tribal Self-Governance Program under Title V.;

WHEREAS, Congress, in Title V, has authorized the Secretary to negotiate and implement a Compact of Self-Governance and Funding Agreements with the governing bodies of participating Tribal governments of qualified Alaska Native and American Indian Tribes that have completed a planning activity;

WHEREAS, Congress has directed that the Funding Agreements, which the Secretary negotiates with Alaska Native and American Indian tribes, shall authorize the Co-Signers to plan, conduct, consolidate, administer, receive full tribal shares of funding, redesign programs, and reallocate funds for programs, services, functions and activities as provided in sections 505(b)(1) and, (b)(2) and 506 (e) of Title V;

WHEREAS, each Funding Agreement shall specify the programs, services, functions or activities to be performed or administered, the funds to be provided, and the responsibilities of the Co-Signer and the Secretary in accordance with section 505 of Title V;

WHEREAS, the Funding Agreement shall specify the authority of the Co-Signer to redesign or consolidate programs, functions, services and activities (or portions thereof) and to reallocate or redirect funds or modify budget allocations pursuant to section 506(e) of Title V;

WHEREAS, to the extent to which, funding is provided to a Co-Signer, as authorized by Alaska Native Tribes, pursuant to a Funding Agreement, such Co-Signer shall be responsible for administration of programs, services, functions and activities pursuant to the Agreement, consistent with section 505 of Title V;

WHEREAS, nothing in this Compact or associated Funding Agreements 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, pursuant to section 515(a) of Title V;

WHEREAS, in Title V, Congress has directed that the Funding Agreements, which the Secretary negotiates with Co-Signers shall contain certain provisions and, at the option of the Co-Signers, apply to certain programs, activities, functions and services of the Indian Health Service (including construction) as specified in sections 505, 507(a)(2)(A), and 509 of Title V;

WHEREAS, Congress has directed that, at the request of the governing body of qualifying Tribes and the ANTHC and under the terms of a Funding Agreement, the Secretary shall provide funding to the Tribes and the ANTHC to implement the Funding Agreement in accordance with section 508 of Title V;

WHEREAS, Congress has directed that the Secretary shall interpret federal laws and regulations in a manner that will facilitate the implementation of a Compact of Self-Governance and Funding Agreement authorized by section 512(a) of Title V;

WHEREAS, Congress has directed that the Secretary shall interpret federal laws and regulations in a manner that will facilitate the inclusion of activities, programs, services, and functions (or portions thereof) in Compacts of Self-Governance and Funding Agreements authorized by section 512(a) of Title V;

WHEREAS, it is the intent of certain Alaska Native Tribes to collectively enter into a single Compact with the Secretary. To carry out that intent, such Tribes (hereafter referred to as signatory Tribes) enter into this Compact either by individual signature or by means of a delegation of signature authority as authorized by resolution of the Tribal government. Such resolutions are attached as Exhibit “A”.

WHEREAS, it is the intent of the signatory Tribes that this Compact will be carried out either by the Tribe itself, by tribal organizations or Inter-Tribal Consortia, as authorized by resolution of Tribe(s) as defined by 25 USC § 450b(e), section 501(b), and by the ANTHC under section 325 of P.L. 105-83. These Tribes, tribal organizations and Inter-Tribal Consortia, including the ANTHC, are bound by the terms of this Compact and are signing separately as Co-Signers.

WHEREAS, it is the intent of the parties that each Tribal Co-Signer Funding Agreement entered into under this Compact shall be executed by the Tribes, either by individual signature or by means of a delegation of signature authority as authorized by resolution of the Tribal government. Each such Funding Agreement also will be signed by a Tribal Co-Signer, designated by the Tribal governing body. The Tribal Co-Signer will carry out the terms of the Funding Agreement for the signatory Tribe(s) from which it has obtained a resolution of authority and be bound by its terms;

WHEREAS, the ANTHC may enter into this Compact and into Funding Agreements under this Compact as authorized by the Board of Directors of the Alaska Native Tribal Health Consortium; and

WHEREAS, for purposes of clarification, and to recognize the government to government relationship between the signatory Tribes and the Secretary, the parties agree that the signatory Tribes, by entering into this Compact, do not relinquish any aspects of Tribal sovereignty to the Co-Signers. The Tribal Co-Signers act only for and on behalf of the signatory Tribe(s) within the scope of the authority granted to them by tribal resolution or by law and the ANTHC has only the authority granted to it under section 325 of P.L. 105-83. Tribal Co-Signers and the ANTHC by carrying out the terms of this Compact and the associated Funding Agreements do not gain the status of a sovereign tribal government;

WHEREAS, the parties have determined that all of the provisions of this Compact are authorized by Title V or other provisions of federal law and the parties have executed this Compact in reliance on this representation;

NOW, THEREFORE, the Secretary, signatory Tribes and the Co-Signers do hereby agree to enter into, undertake, and be bound by this Compact in accordance with the foregoing principles.

ARTICLE I — AUTHORITY AND PURPOSE

Section 1 – Authority. This Compact of Self-Governance, which became effective October 1, 1994, was amended and restated effective October 1, 1995, October 1, 1996, October 1, 1997, October 1, 1998, and October 1, 2000, and was further amended and restated in FY 2001 effective October 1, 2000, to conform with Title V, October 1, 2003, October 1, 2006, October 1, 2008, and October 1, 2010 (hereinafter the “Compact”), is authorized by Title V of the Indian Self-Determination and Education Assistance Act, as amended, and is hereby entered into by the Secretary of the Department of Health and Human Services of the United States of America (hereinafter the “Secretary”), represented by the Director of the Indian Health Service, certain Alaska Native Tribes, as identified in Exhibit A, recognized by the United States, acting individually or collectively, and the Alaska Native Tribal Health Consortium (hereinafter the

“ANTHC”). 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 2 – Purpose. This Compact shall be liberally construed to achieve its purposes:

(a) This Compact is to carry out a Self-Governance Program authorized by Title V, and is intended to transfer to tribal governments, at a tribe's request, the power to decide how federal programs, services, functions and activities (or portions thereof) shall be funded and carried out. Title V is meant to strengthen the government-to-government relationship and to uphold the United States trust responsibility for each Indian Tribe. This Compact promotes the autonomy of the Tribes in Alaska in the realm of health care.

(b) This Compact is to enable the signatory Tribes and the Co-Signers to re-design health programs, activities, functions, and services of the Indian Health Service; to reallocate funds for programs, activities, functions, or services according to the priorities of the signatory Tribes and Co-Signers; to enhance the effectiveness and long-term financial stability of the Tribes and the Co-Signers; and to streamline the federal Indian Health Service bureaucracy.

(c) This Compact is to enable the United States to maintain and improve its unique and continuing relationship with and special trust responsibilities and legal obligations pursuant to 25 U.S.C. 1602 of the IHCA to the Tribes through tribal self-governance and to permit an orderly transition from federal domination of programs and services.

(d) This Compact and Funding Agreement shall transfer to signatory Tribes, acting individually or collectively, and the ANTHC the responsibility for the programs, activities, functions and services of the Indian Health Service included in the Funding Agreement. This Compact allows signatory Tribes, acting individually or collectively, and the ANTHC to exercise meaningful authority to plan, conduct, and administer those programs and services to meet the health care needs of the Alaska Native Tribes. In fulfilling its responsibilities under the Compact and consistent with 25 U.S.C. §§ 1602(5), (6), and the November 5, 2009 Memorandum for the Heads of Executive Departments and Agencies, the April 29, 1994, Memorandum from the President of the United States of America for the Heads of Executive Departments and Agencies, attached hereto as Exhibit B, 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 Tribes on a government-to-government basis.

ARTICLE II — TERMS, PROVISIONS AND CONDITIONS

Section 1 – Term and Resolutions.

(a) **Term.** The term of this Compact begins as to each Co-Signer on the effective date of the Co-Signer's first Funding Agreement and shall extend thereafter as to each Co-Signer throughout the period authorized by Title V of the Indian Self-Determination and Education Assistance Act, and any subsequent amendment thereto, provided the Co-Signer has a Funding

Agreement in effect, and shall remain in effect for so long as is permitted by Federal law or until terminated by mutual written agreement, retrocession, or reassumption pursuant to section 504(d) of Title V.

(b) Resolutions from Signatory Tribes. Those Tribes which intend to participate in this Compact and the applicable Funding Agreement through delegation of signature authority as provided in this Compact must have issued a written resolution authorizing the Tribal Co-Signer, on their behalf, to enter into this Compact and Funding Agreement on or before the date the Compact and the applicable Funding Agreement is signed by the Tribal Co-Signer for that Tribe, provided that if a Tribal Co-Signer negotiates a Funding Agreement prior to obtaining an authorizing resolution from a Tribe, nothing herein shall be construed to limit or impair in any way a tribal government's sovereign right to decide whether or not to sign such a resolution.

(c) Resolution from the Board of the ANTHC. The ANTHC may participate in this Compact and the applicable Funding Agreement upon receipt of an authorizing resolution of the Board of Directors of the ANTHC, attached hereto as a part of Exhibit A.

Section 2 – Effective Date.

(a) Once this Compact and the Funding Agreements, attached hereto as Exhibit C, are approved and signed by the Co-Signers and the Secretary, they shall be effective as of October 1, 2010. Subsequent Funding Agreements will be effective on the date signed by the Secretary and Co-Signer or another date mutually agreed upon.

(b) During the term of this Compact any Co-Signer which has not previously negotiated a Funding Agreement may do so. All Funding Agreements shall be subject to, and all the activities thereunder shall be governed by, the terms of this Compact to the same extent as the initial Funding Agreements. New Funding Agreements will be effective on the date signed by the Secretary and Co-Signer or another date mutually agreed upon.

(c) Each Funding Agreement and subsequent Funding Agreement of a Co-Signer is deemed to be incorporated, as negotiated, by reference into this Compact, for the purposes only of that Co-Signer and the United States. In the event of inconsistency between the Compact and any subsequent Funding Agreement, the provisions of the Compact shall prevail.

Section 3 – Funding Amount. Subject only to the appropriation of funds by the Congress of the United States and in accordance with section 508 of Title V, the Secretary shall provide the total amounts specified in the Funding Agreements.

Section 4 – Payment.

(a) Payment Schedule. Payment shall be made expeditiously and shall include financial arrangements to cover funding during periods under continuing resolutions to the extent permitted by such resolutions. For each fiscal year covered by the Compact, the Secretary shall make available the funds specified for that fiscal year under the Funding Agreements by paying the respective total amount as provided for in each Funding Agreement in advance lump sum, as permitted by law, or such other payments as provided in the schedule set forth in each Funding

Agreement. The first payment shall be made on or before ten calendar days after the date on which the Office of Management and Budget (hereinafter “OMB”) apportions the appropriations for that fiscal year for the programs, activities, functions and services subject to the Compact. The Prompt Payment Act, Chapter 39 of Title 31, United States Code, shall apply to the payment of funds due under this Compact and to each Funding Agreement negotiated thereunder.

(b) Interest on Advances. Co-Signers receiving funds under applicable Funding Agreements pursuant to this Compact shall be permitted to retain interest earned on funds advanced pending disbursement as authorized by law. Interest earned on advances shall not diminish the amount of funds the Co-Signer is authorized to receive under its Funding Agreement in the year earned or in any subsequent fiscal year. All funds transferred under Funding Agreements pursuant to this Compact shall be managed using the prudent investment standard pursuant to section 508(h) of Title V.

Section 5 – Reports to Congress. In accordance with section 514 of Title V, 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. Each report shall include a detailed analysis on the level of need being presently funded or unfunded for each signatory Tribe and Co-Signer. The contents of each report shall comply with section 514(b). In compiling the reports, the Secretary may not impose any reporting requirements on Co-Signers not otherwise provided in Title V. The Secretary shall provide each Co-Signer 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 Co-Signers may comment on the report. The Secretary shall include each Co-Signer's comments in the final report to Congress.

Section 6 – Audits

(a) Single Audit. Each Co-Signer that has executed a Funding Agreement pursuant to this Compact shall provide to the National External Audit Review Center (or its successor), which is the designee of the Secretary for the purposes of this section, 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.

(b) Cost Principles. Each Co-Signer shall apply cost principles under the applicable OMB Circular, except as modified by section 106(k) of the Indian Self-Determination and Education Assistance Act, as amended, which section is hereby incorporated into this Compact, or by any exemptions subsequently granted by OMB. To the extent that OMB Circular A-87 or its successor, or other applicable circulars, permit agency pre-approval of allowable costs, the agency hereby grants that pre-approval. The Secretary will assist the Co-Signers in obtaining such additional waivers from OMB as are requested by the Co-Signers. No other audit or accounting standards shall be required by the Secretary. Any claim by the Federal Government against any Co-Signer receiving funds under a Funding Agreement based on any audit under this section shall be subject to the provisions of section 106(f) of the Indian Self-Determination and Education Assistance Act, as amended.

Section 7 – Records. Each Co-Signer's practices relating to document disclosure and record-keeping associated with this Compact shall, in accordance with applicable law, be set forth in the respective Funding Agreement.

Section 8 – Property.

(a) In General. The provisions of section 512(c) and section 1(b)(8) of the Model Agreement set forth in section 108(c) of the Indian Self-Determination and Education Assistance Act, as amended, are hereby incorporated into this Compact.

(b) Property Management. Management of property under this Compact shall be in accordance with additional provisions included in each Co-Signer's Funding Agreement.

(c) Access to Property Subject to Destruction. Prior to the destruction of federal property which would otherwise be declared surplus or excess and which is located within the service area of a Co-Signer, the Secretary, if previously requested by the Co-Signer, shall provide notice of such proposed destruction to the Co-Signer. Such notice shall inform the Co-Signer of the name and address of the official responsible for determining whether such property will be destroyed or declared surplus or excess. If the Secretary is the responsible official, the Secretary will consider information provided by the Co-Signer regarding transfer of the property, rather than destruction, and, if not the responsible official, the Secretary will assist the Co-Signer in communicating information to the responsible official.

(d) Leases. Upon the request of a Co-Signer, the Secretary shall enter into a lease with the Co-Signer in accordance with section 105(l) of the Indian Self-Determination and Education Assistance Act, as amended.

Section 9 – Regulatory Authority. The Secretary and the Co-Signers agree to utilize the following procedures governing the establishment and application of program rules and regulations under this Compact:

(a) Program Rules. No Co-Signer is required to comply with any agency circular, policy, manual, guidance or rule adopted by the Indian Health Service other than those identified in this section or expressly incorporated by reference in the individual Co-Signer's Funding Agreement in carrying out the programs, services, activities and functions under the Compact, except for the eligibility provisions of section 105(g) of the Indian Self-Determination and Education Assistance Act, as amended, and regulations promulgated under section 517 of Title V.

(b) Federal Regulations.

(1) Applicable Federal Regulations. The Co-Signers, in carrying out the provisions of this Compact and applicable Funding Agreements, will be required to comply only with applicable federal regulations, which include regulations promulgated under section 517 of Title V unless waived as provided in section 512(b) of Title V.

(2) Waiver of Federal Regulations.

(A) The Secretary and the Co-Signer will seek to identify federal regulations promulgated pursuant to section 517 or under the authorities specified in section 512(b) of Title V which may require waiver in order to effectively carry out this Compact or any Funding Agreement.

(B) Waivers of regulations shall be submitted and addressed in accordance with the procedures set forth in section 512(b).

(c) Title I Section Incorporated by Reference. Section 105(a)(1) of the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. § 450j(a)(1), is hereby incorporated in this Compact and shall have the same force and effect as if it were set forth in full in Title V of the Act.

Section 10 – Disputes.

(a) All disputes between the Indian Health Service and any Co-Signer or between the Indian Health Service and all Co-Signers under this Compact shall be subject to Title V and the provisions of section 110 of the Indian Self-Determination and Education Assistance Act, as amended, and all remedies provided for therein shall be available to each Co-Signer of this Compact. Actions and proceedings to enforce the Co-Signer'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 same extent as are actions and proceedings involving Public Law 93-638 contracts.

(b) In the alternative, the Indian Health Service and the Co-Signers may use the processes authorized and encouraged in the Administrative Dispute Resolution Act, 5 U.S.C. § 581 note, for more informal resolution of disputes arising under this Compact and associated Funding Agreements.

Section 11 – Retrocession and Discontinuance. The retrocession provisions of section 506(f) of Title V shall apply if a signatory Tribe decides to retrocede a portion or all of the programs contained in the applicable Funding Agreement. Retrocession shall be in accordance with the procedures and timelines included in that Tribe's Funding Agreement. A Tribal Co-Signer which is a consortium of Tribes may discontinue its participation in the Compact in accordance with the procedures and timelines in the Funding Agreement and in the inter-tribal memorandum of agreement for that consortium. The ANTHC may discontinue its participation in the Compact in accordance with the procedures and timelines included in its Funding Agreement.

Section 12 – Subsequent Funding Agreements.

(a) Negotiations for subsequent Funding Agreements, as provided for in Article VI, section 2, shall begin no later than 120 days in advance of the conclusion of the preceding Funding Agreement. Each Co-Signer is hereby assured that future funding of the Co-Signer's subsequent Funding Agreements shall only be reduced pursuant to the provisions of section 508(d) of Title V provided, however, that future funding for each Co-Signer's non-recurring

funds and tribal shares shall be subject to adjustments in accordance with a yearly reallocation decision by the Co-Signers. The Secretary agrees to prepare and supply relevant information, and promptly to comply with the Co-Signers' requests for information reasonably needed to determine the funds that may be available for a subsequent Funding Agreement as provided for in Article VI, Section 2 of this Compact.

(b) If the parties are unable to conclude negotiation of a subsequent Funding Agreement, the terms of this Compact and the existing Funding Agreement shall, at the option of the Co-Signer, continue on in 30-day, 90-day or longer increments until a subsequent Funding Agreement is agreed to. As provided in section 505(e) of Title V, the terms of the subsequent Funding Agreement will become retroactive to the end of the term of the preceding Funding Agreement. Any increases in funding to which Tribes are entitled by law or which have been made available by Congress, or increases which Co-Signers subsequently negotiate, shall be included in each Co-Signer's subsequent Funding Agreement.

Section 13 – Health Status Reports. In accordance with section 507(a)(1), Co-Signers 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 Co-Signer in its Funding Agreement. Such reporting may impose only minimal burdens on the Co-Signer and shall be consistent with regulations promulgated under section 517 of Title V.

Section 14 – Secretarial Approval. For the term of the Compact, the provisions of 25 U.S.C. § 81 and 25 U.S.C. § 476 shall not apply to attorney and other professional contracts of signatory tribal governments of Alaska Native Tribes operating under the Compact pursuant to section 511(b) of Title V.

Section 15 – Transportation and Other Supply Sources.

(a) **Use of Motor Vehicles.** Subject to agreement of the General Services Administration, the Secretary hereby authorizes each Co-Signer to obtain Interagency Motor Pool vehicles and related services for performance of any programs, activities, functions and services under this Compact.

(b) **Other Supply Sources.** Federal supply sources (including lodging, airline transportation, and other means of transportation) shall be available to each Co-Signer in accordance with sections 508(e) and 516(a) of Title V.

Section 16 – Limitation of Costs. Each Co-Signer shall not be obligated to continue performance that requires an expenditure of funds in excess of funds awarded under the Funding Agreement. In accordance with section 508(k), if, at any time the Co-Signer has reason to believe that the total amount required for performance of a Funding Agreement, or a specific activity conducted under the Funding Agreement, would be greater than the amount of funds awarded under the Funding Agreement, the Co-Signer shall provide reasonable notice to the Indian Health Service and affected Tribes and tribal organizations. If the Indian Health Service does not take such action as may be necessary to increase the amount of funds awarded under the Funding Agreement, the Co-Signer may suspend performance of the Funding Agreement until such time as additional funds are transferred.

ARTICLE III — OBLIGATIONS OF EACH CO-SIGNER

Section 1 – Consolidation. Each Co-Signer will be responsible for performing the health programs, activities, functions and services as specified in Section 3 of this Article III and in their respective Funding Agreements, as provided for in Article VI, Section 2 of this Compact. To the extent a program, activity, function, or service included within a contract or grant entered into pursuant to sections 102 or 103 of the Indian Self-Determination and Education Assistance Act, as amended, is included within a Funding Agreement, that contract or grant shall be modified or terminated as appropriate. The parties' obligations shall be governed by this Compact and all funds previously obligated under contracts or grants (including carry-over funds) will be re-obligated to the Co-Signer under the applicable Funding Agreement. Such terminated contracts shall be identified by contract number in each Funding Agreement.

Section 2 – Amount of Funds. The total amount of funds covered by the consolidation and redesign provided for in Section 1 of this Article that the Secretary shall make available to the Co-Signers shall be determined in accordance with section 508(c) of Title V and shall be set forth in the respective Funding Agreements between the Secretary and each Co-Signer.

Section 3 – Compact Programs. The health programs, activities, functions and services will be the responsibility of each Co-Signer under this Compact and shall be identified in each Co-Signer's Funding Agreement.

Section 4 – Eligibility for Services. In determining eligibility for services, the Co-Signers shall comply with applicable eligibility provisions set forth in the Indian Health Care Improvement Act, as amended, applicable regulations, and other statutory law.

Section 5 – Reallocation, Redesign and Consolidation. In accordance with section 506(e) of Title V, a Co-Signer may redesign or consolidate programs, services, functions, and activities (or portions thereof) included in a Funding Agreement and reallocate or redirect funds for such programs, services, functions, and activities (or portions thereof) in any manner in which the Co-Signer 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 6 – Consolidation with Other Programs. Each Co-Signer 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 Section 505 of Title V. When programs, services, functions, and activities are consolidated in a funding agreement by a Co-Signer in accordance with the terms of the Funding Agreement and Title V, the Co-signer and its employees carrying out those programs, services, functions, and activities may receive Federal Tort Claims Act coverage in accordance with the statutory provisions and regulations cited in the Compact. 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. In cases in which a Co-Signer consolidates programs, services, functions, and activities under this section, the Co-Signer shall not be required to separate dollars or programs,

services, functions, and activities so long as the Co-Signer can provide sufficient data to permit an acceptable program and financial audit to be conducted.

Section 7 – Program Income, including Medicare/Medicaid. All Medicare, Medicaid or other program income earned by a Co-Signer shall be treated as additional supplemental funding to that negotiated in the Funding Agreement and the Co-Signer may retain all such income, including Medicare/Medicaid, and expend such funds in the current year or in future years, nor shall such funds result in any off-set or reduction in the negotiated amount of the Funding Agreement. Medicare/Medicaid collections of a Co-Signer under Title IV of Public Law 94-437, as amended, shall be used by the Co-Signer in accordance with any applicable statutory restrictions on the use of such funds.

Section 8 – Carry-over. Congressionally appropriated funds allocated in accordance with a Funding Agreement under this Compact are “no year” funds and may be expended by the Co-Signer in accordance with its budget for the year for which the funds are appropriated or carried over and expended in any subsequent fiscal year, and such carry-over shall not diminish the amount of funds the Co-Signer is authorized to receive under its Funding Agreement for any such subsequent fiscal year.

Section 9 – Matching Funds. Funds may be used to meet matching and other cost participation requirements under any other federal or non-federal programs pursuant to section 512(d) of Title V.

ARTICLE IV — OBLIGATIONS OF THE UNITED STATES

Section 1 – Trust Responsibility. In accordance with sections 507(g) and 515(b) of Title V, nothing in this Compact waives, modifies, or diminishes in any way the trust responsibility of the United States with respect to the Alaska Native Tribes or individual Alaska Natives and American Indians which exists under treaty, executive orders, and acts of Congress.

Section 2 – Programs Retained.

(a) The Secretary hereby retains the responsibility for the programs, activities, functions and services with respect to the signatory Tribes that are not specifically assumed by the signatory Tribes, acting individually or collectively, or by the ANTHC through their applicable Funding Agreements and they shall continue to be entitled to the full benefit of those programs, activities, functions, and services retained by the Indian Health Service. In accordance with section 506(h), each Co-Signer shall be eligible for new programs, activities, functions and services of the Secretary and the Indian Health Service on the same basis as other Tribes and Tribal Organizations. The Indian Health Service, in consultation with the Tribes, may reorganize to sustain its ability to provide, in the most effective and efficient manner, all programs, activities, functions, and services that have not been included in the Funding Agreement.

(b) No later than 120 days prior to the end of each fiscal year, the Indian Health Service shall provide each signatory Tribe and Co-Signer with a written list of the retained programs, activities, functions, and services relevant to Native health care in Alaska for the upcoming fiscal year. To the fullest extent permitted by law, the Secretary shall provide any

requesting signatory Tribe and Co-Signer access to, and copies of, all documents and other information relevant to any ongoing retained programs, activities, functions, or services, and shall cooperate with any evaluation which the Co-Signer or signatory Tribe may wish to conduct. The Secretary will cooperate with each Tribe and Co-Signer to facilitate the inclusion of programs, activities, functions and services in future Funding Agreements of those Tribes and Co-Signer.

Section 3 – Financial and Other Information.

(a) To assist the Tribes and Co-Signers in monitoring compliance with section 508(c) of the Indian Self-Determination and Education Assistance Act, as amended, the Secretary shall provide to Co-Signers:

(1) all monthly reports of obligations and allowances, including all reports from Central Office, Headquarters, the Office of Tribal Self-Governance and the Alaska Area Office, concerning funds provided to support programs, activities, functions and services provided by Tribes or Tribal Organizations under this Compact and funds retained by the Indian Health Service to support programs, activities, functions and services retained by the Indian Health Service; and

(2) prompt notice of any new programs, activities, functions and services for which the Tribes or Co-Signers are eligible, including the funding available for such programs, activities, functions and services.

(b) The Secretary shall prepare and promptly supply relevant financial information and comply with each Co-Signer's request for information needed to determine funds that may be available for a successor Funding Agreement.

Section 4 - Savings. If the programs, services, functions and activities carried out under Title V Funding Agreements and this Compact result in a reduction to the administrative or other responsibilities of the Secretary, with respect to the operation of Indian programs, and thereby result in saving that have not otherwise been included in the amount of tribal shares and other funds determined under section 508(c) of Title V, the Secretary shall make such savings available to the Co-Signers for the provision of additional services in accordance with section 507(f) of Title V.

ARTICLE V — OTHER PROVISIONS

Section 1 – Designated Officials/Agent.

(a) **Parties.** On or before the effective date of this Compact, both the Secretary and each Co-Signer shall provide a written designation of an individual as their representative/liaison. The Secretary shall direct all communications about the Compact, and relevant Funding Agreement to the Co-Signer's designee, except in the case where the Compact or Funding Agreement requires notice to the signatory Tribes, in which case notice shall also be sent to the Tribes. Reference herein to Co-Signers or the Secretary shall include the respective Designated Official thereof.

(b) **Agent for Notice.** If Co-Signers assign an agent to accept and distribute notices, those Co-Signers shall provide the name and address of the agent and a description of the limited powers and duties of the agent.

Section 2 – Indian Preference in Employment, Contracting and Sub-Contracting. The Co-Signers will comply with the Indian and Alaska Native preference provisions of sections 7(b) and 7(c) of the Indian Self-Determination and Education Assistance Act, as amended. The parties agree that any Co-Signer may comply with any Indian or Alaska Native preference established by their respective Tribes, including preference based on tribal affiliation.

Section 3 – Federal Tort Claims Act Coverage; Insurance.

(a) The Tribes and Co-Signers are deemed by statute to be part of the Public Health Service (PHS), and the employees of the Tribes and Co-Signers are deemed by statute to be part of or employed by the Public Health Service, for purposes of coverage under the Federal Tort Claims Act, while performing programs, activities, functions or services under this Compact and described in the Co-Signer's Funding Agreement (including new and existing programs, services, functions and activities as provided under Article III, Section 5 or 6, or supported with income received in accordance with Article III, Section 7), including coverage for claims of medical malpractice, as is more fully described in 25 C.F.R. Part 900 Subpart M, attached hereto as Exhibit E, and incorporated by reference herein, and section 102(d) of the Indian Self-Determination and Education Assistance Act, as amended, as required by section 516(a).

(b) The above status of a Tribe or Co-Signer, or an employee's status as an employee of a Tribe or employee of a Co-Signer, is not affected by the source of the funds used by the Tribe or Co-Signer to carry out the programs, services, functions or activities or to pay the employee's salary and benefits as long as the employee does not receive any additional compensation for the performance of covered services from anyone other than the Tribe or Co-Signer.

(c) The Tribe's employee or the Co-Signer's employee may, while performing under this Compact and any applicable Co-Signer's Funding Agreement and as a condition of employment, be required by the Tribe or Co-Signer to provide services to non-Indian Health Service beneficiaries in order to meet the obligations under this Compact either in facilities of the Tribe or Co-Signer or in facilities other than those of the Tribe or Co-Signer.

(d) Funds provided under a Funding Agreement may be used to purchase such additional liability and other insurance as is prudent in the judgment of a Co-Signer performing under this Compact and Funding Agreement for its protection and the protection of its employees.

(e) Personal services contracts shall be covered under this provision to the extent provided under section 102(d) of the Indian Self-Determination and Education Assistance Act, as amended.

(f) Coverage shall also apply in accordance with Section 813(e) of the IHCA, as amended.

Section 4 – Compact Modifications or Amendments.

(a) Any request for a modification of this Compact must be communicated in writing to all signatory Tribes and Co-Signers and to the Indian Health Service. To be effective any modifications of this Compact shall be in the form of a written amendment to the Compact, and shall require written consent of each of the signatory Tribes, acting directly or through an agent authorized by resolution, and the Secretary.

(b) This provision shall not apply to amendment of the Compact to include additional Tribes and/or Co-Signers. Such amendment shall only require the concurrence of the additional Tribe and/or Co-Signer, and the Secretary.

Section 5 – Construction. This Compact shall apply to funds included in the facilities category of Indian Health Service appropriations. A Co-signer may assume construction projects or programs in accordance with Titles I or V or P.L. 86-121. In doing so, the Co-Signer elects to comply with the regulations of the elected statutory provision.

Section 6 – Officials Not To Benefit. No member of or delegate to Congress shall be admitted to any share or part of any Compact executed pursuant to this Compact, or to any benefit that may arise there from; but this provision shall not be construed to extend to any contract under this Compact if made with a corporation for its general benefit.

Section 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 8 – Penalties. The parties agree that the criminal penalties set forth in 25 U.S.C. § 450d apply to all activities conducted pursuant to this Compact.

Section 9 – Use of Federal Employees. Section 104 of the Indian Self-Determination and Education Assistance Act, as amended, shall apply to this Compact and to any individuals assigned or detailed to any Co-Signer performing functions under this Compact or leaving federal employment to perform services under this Compact, including assignments either on detail or on leave without pay and with or without reimbursement by the Co-Signer for the travel and transportation expenses to or from the place of assignment and for the pay, or supplemental pay, or a part thereof, of the employee during assignment.

Section 10 – Extraordinary or Unforeseen Events. This Compact is intended to obligate each Co-Signer to carry out all usual and ordinary functions respecting the programs, activities, functions and services that it is undertaking to assume responsibility for under its Funding Agreement. In the event major unforeseen or extraordinary events occur, as jointly identified by each Co-Signer and the Secretary, with consequences beyond the control of the Co-Signer, that the Co-Signer shall have access to additional services and funding amounts for its Funding Agreement as described in its Funding Agreement. The parties will seek to ensure that funds available to the Co-Signer to deal with the unforeseen circumstance will not be less than would have been available to non-Compact Tribes or the Indian Health Service had they

encountered a similar circumstance. Each Co-Signer's participation in the Indian Health Service Catastrophic Health Emergency Funds will be identified in the Co-Signer's Funding Agreement.

Section 11 – Mature Contractor Status upon Compact Termination. In accordance with section 506(g)(3) of Title V, should any signatory Tribe, tribal organization at the direction of a signatory Tribe or Tribes, or the ANTHC, elect to convert all or some of the programs operated under the Compact back to contract status under Public Law 93-638, as amended, such conversion shall not affect the Co-Signer's or the Tribe's status as having operated a mature contract within the meaning of section 4(h) of the Indian Self-Determination and Education Assistance Act, as amended. Such conversion would occur only at the end of the Compact term, on another date mutually acceptable to the Tribe, the Co-Signer and the Secretary, or as otherwise provided in this Compact, and will be implemented in a manner which avoids any interruption of services to individual tribal members. If the Compact is terminated or a Tribe determines that it will retrocede any program, activity, function or service operated under the Compact, neither the Tribe nor the Co-Signer shall lose its mature contractor status under section 4(h) as provided above.

Section 12 – Startup Costs. In accordance with section 508(c) of Title V, startup costs may be separately negotiated by each Co-Signer and shall be included in each Co-Signer's Funding Agreement, if available. Startup costs are designed to compensate the Tribe for costs associated with implementing this Compact which the Co-Signer would not normally incur. Upon agreement to such costs on an annual basis, funds for such costs shall be included in the Funding Agreement, if available.

Section 13 – Limitation of Liability. Any liability to the United States or to any third party incurred by a Co-Signer arising out of its performance of or expenditure of funds under this Compact and each Co-Signer's Funding Agreement shall be the obligation only of that Co-Signer and shall not be the obligation of any Co-Signer of this Compact which did not participate in such performance or expenditure.

Section 14 – Contracting Rights. Nothing in this Compact or in any Funding Agreement shall be construed to preclude a Co-Signer from contracting with the Secretary to perform a program, activity, function, or service under Title I of P.L. 93-638, as amended, subject, however, to constraints against duplication pursuant to section 506(h) of Title V.

Section 15 – Sovereign Immunity. Nothing in this Compact or in any Funding Agreement shall be construed to affect the sovereign immunity, to the extent that it may exist, of any Tribe or Co-Signer.

Section 16 – Interpretation of Federal Law. In the implementation of this Compact, the Secretary, to the extent feasible, shall interpret all federal laws, executive orders, and regulations and this Compact in a manner that effectuates and facilitates the purposes of this Compact and achievement of the Co-Signers' health goals and objectives in accordance with section 512(a) of Title V.

Section 17 – Inadequacy of Program Funding. The parties to this Compact understand that the Indian Health Service budget is inadequate to fully meet the special responsibilities and legal obligations of the United States to assure the highest possible health status for American

Indians and Alaska Natives and that, accordingly, the funds provided to the Co-Signers are inadequate to permit the Co-Signers to achieve this goal. The Secretary commits to advocate for increases in the Indian Health Service budget to further the ability of the Co-Signers to provide the full range of services that are the responsibility and obligation of the United States to make available to American Indian and Alaska Native people and to meet the goals of the Indian Health Care Improvement Act.

Section 18 – Effect on Non-Signatory Tribes.

(a) Nothing in this Compact or associated Funding Agreements shall be construed to limit or reduce in any way the service, contracts or funds that any Indian tribe, inter-tribal consortium or tribal organization is eligible to receive. It is the intent of the parties to this Compact that the Compact will not have an adverse impact on any tribe choosing not to participate in this Compact directly or through a tribal organization.

(b) The Compact shall not be construed to limit or curtail the right of any Tribe to pursue a contract under Title I of the Indian Self-Determination and Education Assistance Act, as amended, individual participation in this Compact under Title V, or an independent compact under Title V.

Section 19 – Gaining Mature Contractor Status. Subject to Secretarial approval, a tribe that participates in this Compact by authorizing a tribal organization or inter-tribal consortium to be a Co-signer and receive funds on its behalf, which enters into a Memorandum of Agreement with the Co-Signer, for three years manages a program, activity, function or service identified in the Co-Signer's Funding Agreement and obtains three audits with no material unresolved audit exceptions, shall be deemed a mature contractor for all purposes, including entering into a Compact under section 503(c) of Title V. Nothing in this section precludes the right of a tribe to become a mature contractor under other provisions of law.

Section 20 – Severability. 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. Should such a court make such a finding, 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 21 – Applicability of Title I Provisions. At the request of a Co-Signer, any provision of Title I, not already specified in section 516(a) of Title V, to the extent such provision does not conflict with a provision in Title V, shall be made a part of a Funding Agreement. The Secretary is obligated to include such provision at the option of the Co-Signer. If such provision is incorporated it shall have the same force and effect as if it were set out in full in Title V and in the Funding Agreement. Should the Co-Signer request such an incorporation sometime other than during the negotiation stage of the Funding Agreement, the Co-Signer will present the proposed incorporated Section to the Indian Health Service, OTSG, with a copy to the Alaska Area IHS Director. The Director of the Indian Health Service shall approve a written addendum to the Funding Agreement within 30 days after verifying that the provision is in Title I. In the case of any such provision, it shall be deemed incorporated in the Funding Agreement at the end of the 30 day period unless the Co-Signer receives a written notice from the Indian Health Service stating that the provision is not in Title I. In the event a Co-Signer 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.

Section 22 — Purchases from the Indian Health Service. With respect to functions transferred by the Indian Health Service to a Co-Signer under this Compact or an applicable Funding Agreement, the Indian Health Service shall provide goods and services to the Co-Signer, on a reimbursable basis, including payment in advance with subsequent adjustment. The reimbursements received from those goods and services, along with the funds received from the Co-Signer pursuant to this section, may be credited to the same or subsequent appropriation account which provided the funding, such amounts to remain available until expended.

ARTICLE VI — ATTACHMENTS

Section 1 – Approval of Compact. The resolutions of the Tribes approving this Compact for each Co-Signer are attached as part of Exhibit A. Additional resolutions for each Co-Signer may be filed with the Indian Health Service and included in Exhibit A up to the effective date of each Co-Signer's Funding Agreement. The resolution of the Board of Directors of the ANTHC is attached as part of Exhibit A.

Section 2 – Funding Agreements. Each Co-Signer's Funding Agreement shall be attached hereto as Exhibit C.

ARTICLE VII — COUNTERPART SIGNATURES

This Compact may be signed in counterparts.