

**CHILD SUPPORT AGREEMENT BETWEEN THE \_\_\_\_\_ TRIBE**

**AND**

**THE STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES, DIVISION OF CHILD SUPPORT**

**Table of Contents**

<b>Preamble</b>	Page 2
<b>Purpose</b>	Page 3
<b>General Provisions</b>	Page 3
<b>Addendum A: Definitions</b>	Page 7
<b>Addendum B Implementation Provisions</b>	Page 10
<b>Addendum C – Full Faith and Credit For Child Support Orders 28 U.S.C. 1738B et seq.</b>	Page 14

## **Preamble**

The State of Washington, Department of Social and Health Services, Division of Child Support (DCS) acknowledges the \_\_\_\_\_ Tribe (Tribe), as a sovereign power, has a compelling interest in promoting the integrity of the Tribe as a society and culture, and that it is essential to that end that the Tribe exercises its authority over matters involving the Tribe's children and their interests. The Tribe and DCS desire to enter into this Agreement to manifest a cooperative government-to-government relationship with regard to child support establishment and enforcement, in order to promote the well-being of the Tribe's children.

The Tribe and DCS acknowledge their mutual sovereignty and acknowledge each party has jurisdiction over domestic relations, including child support matters.

The Tribe and DCS declare that there are a significant number of families where the parent responsible for child support is employed by the Tribe or resides on the Reservation; where at least one family member is an American Indian; and where the custodial parent resides in the State of Washington.

The Tribe and DCS declare that this Agreement is consistent with, and is intended to further, the declared national policy of protecting the best interests of children by providing a more effective and efficient way for these children to receive support from both parents, relieving or reducing the burden presently borne by the custodial parent and/or the general citizenry.

The Tribe is authorized to enter into this Agreement pursuant to the Tribe's Constitution and the Tribal Code. DCS is authorized to enter into this Agreement pursuant to the Interlocal Cooperation Act, Revised Code of Washington (RCW), Chapter 26.25, which permits any State agency to enter into a cooperative agreement with an Indian Tribe for their mutual advantage and cooperation.

The parties intend that this Agreement, including Addenda A - Definitions, B – Implementation Provisions and C – Full Faith and Credit for Child Support Orders Act, be liberally construed to effectuate its intent and purposes.

### **Purpose**

The Tribe and DCS declare that it is in their mutual interests to agree upon procedures to establish and enforce Child Support obligations in the \_\_\_\_\_ Tribal Court, and have them adjudicated by that court, according to the Tribe's laws and customs, where the \_\_\_\_\_ Tribal Court has jurisdiction and where an American Indian or tribal employee will be affected.

This agreement, including all Addenda, will (a) outline the procedures for the reciprocal granting of full faith and credit to, and enforcement of certain child support orders and judgments sought to be enforced by the Tribe, the \_\_\_\_\_ Tribal Court or DCS; and (b) further identify procedures whereby DCS can file certain child support establishment cases in the \_\_\_\_\_ Tribal Court, according to the Tribe's laws and customs, and have them adjudicated by that court.

This Agreement is intended solely to coordinate child support establishment and enforcement services for tribal member families and tribal employee families and is not intended to modify or interfere with the Indian Child Welfare Act or other custody or visitation issues presented by the cases under this agreement.

### **General Provisions**

#### **Article I State of Washington Child Support Cases**

The State of Washington, Department of Social and Health Services, Division of Child Support ("DCS") shall file the following cases ("DCS case") in the \_\_\_\_\_ Tribal Court where the custodian of the child has received public assistance on behalf of the child from the State of Washington, or the custodian of the child has requested child support services from DCS, or another state, tribe or country has asked DCS to pursue the case:

- (a) DCS paternity establishment case: where at least one party is American Indian and all of the parties are subject to, or consent to, Tribal Court jurisdiction;
- (b) DCS child support establishment case: where the non-custodial parent resides on the Reservation;
- (c) DCS child support modification case: where the non-custodial parent resides on the

Reservation or where the order was entered by the \_\_\_\_\_ Tribal Court, and where the Tribal Court has jurisdiction;

- (d) DCS child support enforcement case: where the non-custodial parent is employed by the Tribe, a Tribal enterprise, or an Indian owned business located on the Reservation, or otherwise owns assets available for garnishment through the \_\_\_\_\_ Tribal Court.

## **Article II Applicable Law**

In any DCS case, the governing law shall be this agreement, the laws, resolutions, ordinances, customs or codes of the Tribe, and the laws of the United States, including the Federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B et seq, [and state law where appropriate]. The non-custodial parent may raise any defense, including a claim of in-kind, traditional or customary support, equitable estoppel, or other defense, unless the Tribal Court finds the defense is not available under the doctrine of res judicata.

The immunity of the Tribe from suit in the \_\_\_\_\_ Tribal Court and no other court, is waived for the limited purpose of allowing enforcement of child support orders meeting the provisions of this agreement and implementation plan. The Tribe shall not be liable for any support award, penalty, interest, cost or attorneys' fees if the Tribe fails to act as required by a court order or statute.

## **Article III Notice to DCS & Right to Intervene**

In any child support case filed in Tribal Court, the Tribal Court will ask the parties if any of them have received state or tribal public assistance on behalf of the child(ren) involved in the case, or if any of them have requested child support enforcement services from DCS. If any party answers affirmatively or in any case where a state or a tribe has an assignment, the Tribal Court shall provide notice to the appropriate agency. The Tribe agrees to permit DCS to intervene as a party when the State of Washington has an interest in the case.

#### **Article IV Full Faith and Credit of Child Support Orders**

DCS shall give full faith and credit to any order issued by the Tribal Court in accordance with this Agreement and the Federal Full Faith and Credit For Child Support Orders Act, 28 U.S.C. 1738B et seq. The Tribe, in and through its Tribal Court, shall give full faith and credit to any order presented by DCS for recognition and enforcement by the Tribal Court, in accordance with this Agreement and the Federal Full Faith and Credit For Child Support Orders Act, 28 U.S.C. 1738B et seq, hereby attached as Addendum C.

#### **Article V Miscellaneous**

1. Nothing in this Agreement shall limit the right of any individual to bring his or her own separate paternity case or Child Support case in any forum of his or her choice.
2. DCS and the Tribe shall each bear its own expenses that each may incur in implementing its respective responsibilities under this Agreement.
3. In the event that the federal government determines that any provision of this Agreement would violate the State of Washington's IV-D Plan, said provision shall be null and void to the extent of such violation, but the remaining provisions of this Agreement shall be in full force and effect.
4. This Agreement and the Implementation Procedures constitute the entire agreement between DCS and the Tribe on Child Support matters and supercedes any prior agreement between DCS and the Tribe on Child Support matters.
5. Nothing in this Agreement is intended to, nor shall it affect, the inherent authority of the Tribe to initiate any case in tribal, state or federal court to enforce any right of the Tribe or of any of its members.

**Article VI Termination**

Either party, upon thirty (30) days written notice to the other party may terminate this Agreement.

Cases pending in Tribal Court as of the date of termination of this Agreement shall, notwithstanding said termination, be completed to final judgment or final appeal decision, according to the terms of this Agreement.

**Article VII Review and Clarification**

This Agreement shall be reviewed at the request of either party. The parties will discuss any concerns they may have with the implementation or interpretation of this Agreement. The Tribe and DCS acknowledge that there may arise instances where one party believes that the other has violated a provision of this Agreement; or that clarification is necessary to interpret a provision of this Agreement; or that a change in Title IV-D of the Social Security Act, or its implementing regulations; or changes in State or Tribal Law may require a modification of the provisions of this Agreement. In such an instance, the parties agree that they will first each make a good faith effort to resolve the matter amicably through mutual discussion and agreement. If the matter cannot be resolved through such efforts, the parties may, by mutual agreement, request that a mediator resolve the dispute. It shall not be a requirement that such mediation be invoked or exhausted before a party invokes the provisions of Article VI of this Agreement.

On the \_\_\_\_ day of \_\_\_\_\_, 200\_, DCS and the Tribe hereby approve this Agreement, through the following persons, each in their representative capacities:

The \_\_\_\_\_Tribe

The State of Washington  
Department of Social and Health Services

\_\_\_\_\_

\_\_\_\_\_

## **ADDENDUM A**

### **DEFINITIONS**

Child: Any dependant person under the age of 18 owed a duty of Child Support under the laws of the Tribe, another Tribe, State or foreign jurisdiction; or any person over the age of 18 for whom a Child Support Order has been issued.

Child Support: A payment of money, or the provision of in-kind or traditional and customary support, or the provision of any benefit, or arrearages with respect to any of the foregoing, or any other payment of money or benefit provided which is intended for the support or care of a child.

Tribal Court: The court established pursuant to the \_\_\_\_\_ Tribal Constitution and the \_\_\_\_\_ Tribal Code ("Code").

Child Support Guidelines: A set of instructions to a court, which are either mandatory or advisory to the court, for example, which specify, for purposes of determining child support, what may be treated as "income" and what may not, or what may be counted as a deduction from income, or which describes the situations where the court may deviate from the amounts required under a Child Support Schedule, and other such matters related to establishing a child support obligation. For further information, see 45 CFR 302.56.

Child Support Order: A judgment, decree, or order of a court requiring the payment of a set or determinable amount of child support in periodic amounts or in a lump sum and includes a permanent order, temporary order, initial order or a modification of an order.

Child Support Schedule: A schedule of definite and fixed monthly Child Support, usually based upon the following criteria: the combined monthly net income of the mother and father of the child (and where the amounts are apportioned to the mother and father according to their respective percentages of the combined monthly net income), the number of children for whom the non-custodial parent is required to pay Child Support, and the age of each child concerned.

Conference Board: An informal grievance or dispute resolution process, provided under Washington State laws and regulations in which a panel of Support Enforcement Officers, chaired by an attorney employed by DCS, may consider various claims, including but not limited to, a claim that, if DCS proceeds with a particular child support enforcement action it will result in substantial financial hardship to the non-custodial parent or his or her immediate family, and in which, said Conference Board may grant various forms of relief from such enforcement case.

Custodian/Custodial Parent: Any person/parent having the care, physical custody and control of any child or children under the laws of the Tribe, another Indian Tribe or a State.

DCS: The State of Washington, Department of Social and Health Services, Economic Services Administration, Division of Child Support.

Federal Full Faith and Credit for Child Support Orders Act: Provisions of 28 U.S.C. 1738B et seq.

Foreign Child Support Order: A child support order issued under the laws of another Tribe or a State.

Garnishee: The employer or individual who is being requested to withhold from the non-custodial parent's earnings.

In-kind Support: Child Support in the form of things (including, but not limited to, clothing, firewood, diapers, food, etc.) which are intended to satisfy the basic needs of a child.

Indian owned Business: An Indian-owned business located on the Reservation.

IRS Certification: A federal requirement for state child support programs to certify the amount of child support debt owed by an individual meeting certain criteria. Case criteria include the basis of the debt is a valid child support order; the custodial parent has a current address; if the debt is owed for public assistance periods, it must be \$150 or more and past due for 3 months or more; if the debt is owed to the custodial parent the case must include a dependant child for whom current support is owing, to qualify.

Non-custodial Parent: A person owing a duty to pay Child Support under the laws of the Tribe, another Indian Tribe, State, or foreign country, or under a Child Support Order.

Per Capita Payments: Distributions that may originate from a settlement on trust assets, distributions of income earned by the Tribe or Tribal Enterprise, or other dividends issued to each tribal member equally. The general rule, when Congress has prescribed a method of distributing tribal property among members, is through equal shares.

Public Assistance: Financial, medical or day care expenses that are provided to eligible applicants under the Federal Temporary Assistance For Needy Families, Foster Care or Medicaid programs.

Reservation: The lands and areas within the borders of the \_\_\_\_\_ Tribe's reservation.

State: A State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

Statute of Limitations: Generally, a statute of limitation establishes time limits beyond which lawsuits are barred. As applied to child support, it means the laws of a jurisdiction relating to limits to establishing, enforcing, or distributing child support monies.

Substantial Financial Hardship: Examples of this include: when the debt interferes with the non-custodial parent's ability to secure necessities or provide them to dependents; when debt may create economic, medical, or severe mental stress; when the condition is likely to continue; and



when there are low odds of collection of the total debt.

Traditional or Customary Support: Child Support which has been found by the \_\_\_\_\_ Tribal Court to be support for a child, according to the laws, traditions, customs or practices of the \_\_\_\_\_ Tribe (including, but not limited to, fish, game, venison, wood, etc.).

Tribe: The \_\_\_\_\_ Tribe.

Terms defined herein are found in the Agreement and attached Addenda.

**ADDENDUM B**  
**IMPLEMENTATION PROVISIONS**

**Section I Paternity Cases**

In a DCS paternity case, where the Tribal Court has jurisdiction, it may order that any of the parties submit to genetic testing according to the procedures provided for such testing under DCS' current contract with its testing facility and at the currently applicable costs to DCS for such testing. If the Tribal Court finds a man to be the father of the child, based on the test results, it may order him to reimburse DCS the costs of the test. Regardless of the testing results, it shall be in the sole discretion of the Tribal Court to decide whether any party shall be ordered to reimburse DCS these costs.

**Section II Establishment Cases**

DCS, through its authorized representative, shall file a Petition in Tribal Court for Establishment of Child Support on behalf of the child, to pursue final judgment and appeal such final judgment, pursuant to the tribal code (Citation) so long as:

1. The custodian of the child is receiving or has received public assistance on behalf of the child from the State of Washington, the custodian has requested child support enforcement services from DCS, or there has been a request to DCS to establish the child support obligation for the child on behalf of a tribe, another state or country; and
2. The non-custodial parent lives on the Reservation or is otherwise subject to the jurisdiction of the Tribal Court.

**Section III Enforcement Cases**

In the exercise of the Tribe's sovereignty, DCS may seek and the Tribal Court may issue, an order (writ) garnishing the non-custodial parent's compensation received from the Tribe, a Tribal enterprise or an Indian owned business ("Garnishee"), for the limited purpose of enforcing child support orders. "Compensation" shall mean wages, salary, commissions, bonuses, and periodic

payments for the non-custodial parent's retirement, pension, insurance [at the Tribe's discretion, this may include, any per capita payments owed to the non-custodial parent]. Any writ of garnishment may be obtained only in Tribal Court and not in any other court. The amount of the garnishment shall not, in any case, exceed \_\_ (\_\_\_\_%) of the non-custodial parent's net earnings computed for each pay period of the non-custodial parent. "Net earnings" shall mean compensation minus deductions required under law by federal, state or Tribal government, excluding voluntary deductions by the non-custodial parent, for example, for repayment of a loan from a bank or credit union. Any writ shall order the Garnishee to withhold the wages and send them to the Washington State Support Registry the amounts stated in the writ and order the Garnishee to file an answer to the writ with Tribal Court. If a Garnishee fails to withhold the wages of the non-custodial parent within thirty (30) days of service of a valid writ, the Tribal Court may, at the request of DCS, or the custodial parent, find the Garnishee liable for payment of the amounts required under the writ of garnishment to the extent of wages owed by the Garnishee to the non-custodial parent on or after the date of service of the writ on an appropriate payroll officer of the Garnishee.

#### **Section IV Modification Cases**

The Tribal Court may prospectively modify a foreign child support order that has been recognized and given full faith and credit by the Tribal Court according to the provisions of the federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B et seq., attached herein at Addendum C. Modifications are prospective from the date that DCS filed the case, and may include in-kind, traditional or customary support ("non-cash support") for the child, in lieu of cash payments required under the prior order; provided that, the Tribal Court reduces the non-cash support to a money amount not to exceed fifty percent (50%) of the cash payments required under the prior order. [The purpose of this section is to allow prospective modification of child support amounts, and is not intended to change any other provisions of the underlying order, or eliminate the prior order. Furthermore, the tribal court shall reduce to judgment any child support arrears owing under the original order, shall clarify the time period for which the arrears are owed, and shall identify a monthly obligation for payment of the judgment amount.]

### **Section V IRS Certification Cases**

In a case where DCS seeks to enforce an administrative, state or tribal court child support order, by certification to the IRS for garnishment of the non-custodial parent's federal income tax refund, the non-custodial parent may request a hearing in Tribal Court so long as (1) Tribal Court has personal jurisdiction over the non-custodial parent and the custodian, (2) the non-custodial parent is informed of his/her right to ask DCS for administrative or Conference Board review of the case, and (3) DCS and the custodian are given notice of, and an opportunity to be heard at, the hearing. Upon such hearing, the Tribal Court may order DCS not to certify the debt, if the Tribal Court finds substantial evidence that it will cause the non-custodial parent, or his or her immediate family, to suffer substantial financial hardship.

### **Section VI Payment to Registry**

In any DCS case where (1) the custodian is receiving public assistance from the State of Washington on behalf of a child; or (2) child support arrearages are owed to another tribe, a state or to the custodian and the other tribe, state or the custodian has requested child support enforcement services from DCS; the Tribal Court shall order any current child support payments and/or arrearage payments by the non-custodial parent, or by the Garnishee, to be made to the Washington State Support Registry, Washington State Support Registry, PO Box 45868, Olympia, WA 98504.

### **Section VII Tribal Child Support Schedule**

If the Tribe chooses to develop a Tribal Child Support Schedule or Guidelines, upon request, DCS shall assist the Tribe in developing such Schedule or Guidelines. DCS agrees to provide technical assistance to, and training of, tribal personnel, as reasonably requested.

### **Section VIII Exchange of Information for Child Purposes**

In order to achieve the purposes of this Agreement, the Tribe and DCS agree that, upon reasonable written request, it will promptly provide any of the following information in its possession with respect to either the non-custodial parent or the custodian: verification of employment, name of employer, salary, physical address, mailing address, birth dates, social security number, and medical insurance coverage for the non-custodial parent or the custodian and any of his/her children. The Tribe and DCS agree that the information described in this paragraph shall be used solely for purposes of establishing and enforcing child support obligations. The Tribe and DCS agree to comply with federal, Washington State and \_\_\_\_ Tribal laws and regulations, with regard to the confidentiality of the information described in this paragraph.

### **Section IX Service of Process on the Reservation**

The Tribe agrees that, notwithstanding any Code provision to the contrary, when initiating any case pursuant to this Agreement, DCS may accomplish service of process of the initial pleadings on the party(ies) who reside on the Reservation, by delivering the appropriate pleadings by U.S. postage certified mail "restricted delivery return receipt requested" and by providing sufficient proof of such certified mailing to the party(ies) to the Tribal Court. DCS and the Tribe agree that DCS may, alternately, accomplish such service of process by requesting the services of the Tribal Police with payment by DCS of the applicable fee for such services.

**ADDENDUM C**

**FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS ACT**

**28 U.S.C. 1738B et. seq.**

- (a) **General Rule.**--The appropriate authorities of each State—
- (1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and
  - (2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i).
- (b) **Definitions.**--In this section:
- "child" means—
- (A) a person under 18 years of age; and
  - (B) a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.
- "child's State" means the State in which a child resides.
- "child's home State" means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.
- "child support" means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.
- "child support order"—
- (A) means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and
  - (B) includes—
    - (i) a permanent or temporary order; and
    - (ii) an initial order or a modification of an order.
- "contestant" means—
- (A) a person (including a parent) who—
    - (i) claims a right to receive child support; (ii) is a party to a proceeding that may result in the issuance of a child support order; or (iii) is under a child support order; and
  - (B) a State or political subdivision of a State to which the right to obtain child support has been assigned.
- "court" means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.
- "modification" means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.
- "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

- (c) **Requirements of Child Support Orders.**--A child support order made by a court of a State is made consistently with this section if--
- (1) a court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g)--
    - (A) has subject matter jurisdiction to hear the matter and enter such an order; and
    - (B) has personal jurisdiction over the contestants; and
  - (2) reasonable notice and opportunity to be heard is given to the contestants.
- (d) **Continuing Jurisdiction.**--A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order. [Subject to HR 4 changes.]
- (e) **Authority To Modify Orders.**--A court of a State may modify a child support order issued by a court of another State if--
- (1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and
  - (2) (A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or  
(B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.
- (f) **Recognition of Child Support Orders.**--If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:
- (1) If only 1 court has issued a child support order, the order of that court must be recognized.
  - (2) If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.
  - (3) If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of the child, the order most recently issued must be recognized.
  - (4) If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.
  - (5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (d).
- (g) **Enforcement of Modified Orders.**--A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to non-modifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (e) and (f).
- (h) **Choice of Law.**--
- (1) In general.--In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

(2) Law of state of issuance of order.--In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the State of the court that issued the order.

(3) Period of limitation.--In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.

(i) **Registration for Modification.**--If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the non-movant for the purpose of modification.