

**COMPACT  
BETWEEN  
THE EASTERN SHOSHONE TRIBE OF THE WIND RIVER RESERVATION, WYOMING  
AND THE  
UNITED STATES OF AMERICA  
EFFECTIVE [INSERT DATE]**

*This Compact of Self-Governance is made and entered into by and between the Secretary of Health and Human Services of the United States of America (“Secretary”), represented by the Director of the Indian Health Service (“Director”), and the Eastern Shoshone Tribe of the Wind River Reservation (“Eastern Shoshone” or “Tribe”), Wyoming. The Tribe and the Secretary enter into this Compact under Title V of the Indian Self-Determination and Education Assistance Act (the “ISDEAA”), as amended, which authorizes the Secretary to enter into compacts and funding agreements with Tribes. The Secretary has delegated the authority to enter into this Compact and Funding Agreement to the Director. This Compact reflects the Tribe’s commitment to assure access to a comprehensive, integrated, and tribally controlled health care delivery system.*

**RECITALS.**

**WHEREAS**, the Eastern Shoshone Tribe of the Wind River Reservation has asserted its sovereignty throughout history, including in the Fort Bridger Treaty of 1863 [July 2, 1863; 18 Stat. 685; Ratified Mar. 7, 1864], and the Fort Bridger Treaty of 1868 [July 3, 1868; 15 Stat., 673; Ratified Feb. 26, 1869].

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

**WHEREAS**, Congress has declared that it is the policy of the United States, in fulfillment of its special responsibilities and legal obligations to the American Indian people, to assure the highest possible health status for Indians and to provide all resources necessary to affect that policy and to raise the health status of Indians to at least the levels set forth in the goals contained within the Healthy People 2030 initiative or successor objectives, 25 U.S.C. § 1601(3);

**WHEREAS**, Eastern Shoshone, a federally recognized Indian tribe as defined in 25 U.S.C. §§ 5304(e) and 5381(b), has established a Tribal Health Program for the purpose of providing comprehensive, integrated, and tribally controlled health care services directly, by retaining certain programs with the Indian Health Service (“IHS”), and through purchasing other services;

**WHEREAS**, in the spirit and memory of all Eastern Shoshone relations who walked before, Eastern Shoshone health services are dedicated toward a health community; a community in which all of its members enjoy and benefit from the gifts of medicine provided by the creator;

**WHEREAS**, it is the mission of the Tribal Health Program to enrich the community through prevention, education, and continuum of care while honoring culture and traditions;

**WHEREAS**, the Tribe has provided health services for many years under self-determination contracts with the Indian Health Service and has been recognized by the Indian Health Service as a tribal operating unit;

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

**WHEREAS**, Congress has found that transferring full control and funding to Tribal governments, upon tribal request, over decision making for Federal programs, services, functions, and activities (or portions thereof) is an appropriate and effective means of implementing the Federal policy of government-to-government relations with Indian Tribes and strengthens the Federal policy of self-determination and self-governance. Pub. L. 106–260, § 2(6), 114 Stat. 712.

**WHEREAS**, it is the policy of Congress—

“(1) to permanently establish and implement tribal self-governance within the Department of Health and Human Services;

“(2) to call for full cooperation from the Department of Health and Human Services and its constituent agencies in the implementation of tribal self-governance—

“(A) to enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian Tribes;

“(B) to permit each Indian tribe to choose the extent of its participation in self-governance in accordance with the provisions of the Indian Self-Determination and Education Assistance Act [25 U.S.C. 5301 *et seq.*] relating to the provision of Federal services to Indian tribes;

“(C) to ensure the continuation of the trust responsibility of the United States to Indian tribes and Indian individuals;

“(D) to affirm and enable the United States to fulfill its obligations to the Indian tribes under treaties and other laws;

“(E) to strengthen the government-to-government relationship between the United States and Indian tribes through direct and meaningful consultation with all tribes;

“(F) to permit an orderly transition from Federal domination of programs and services to provide Indian tribes with meaningful authority, control, funding, and discretion to plan, conduct, redesign, and administer programs, services, functions, and activities (or portions thereof) that meet the needs of the individual tribal communities;

“(G) to provide for a measurable parallel reduction in the Federal bureaucracy as programs, services, functions, and activities (or portions thereof) are assumed by Indian tribes;

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“(H) to encourage the Secretary to identify all programs, services, functions, and activities (or portions thereof) of the Department of Health and Human Services that may be managed by an Indian tribe under this Act and to assist Indian tribes in assuming responsibility for such programs, services, functions, and activities (or portions thereof); and

“(I) to provide Indian tribes with the earliest opportunity to administer programs, services, functions, and activities (or portions thereof) from throughout the Department of Health and Human Services.” Pub. L. 106–260, § 3, Aug. 18, 2000, 114 Stat. 712.

**WHEREAS**, Congress, in Title V, has authorized the Secretary to negotiate and implement Compacts and Funding Agreements with Tribes that have satisfied the requirements set forth in 25 U.S.C. § 5383(c);

**WHEREAS**, Congress has directed that the Funding Agreement the Secretary negotiates with Eastern Shoshone shall authorize the Tribe to plan, conduct, consolidate, administer, and receive full tribal shares of funding for all programs, services, functions, and activities (or portions thereof) that are carried out for the benefit of Indians because of their status as Indians without regard to the agency or office of the Indian Health Service within which the program, service, function, and activity (or portion thereof) is performed as provided in 25 U.S.C. § 5385(b)(1);

**WHEREAS**, the Funding Agreement shall set forth terms that generally identify the programs, services, functions, or activities (or portions thereof) to be performed or administered, and for such programs, services, functions, or activities the funds to be provided, including those funds to be provided on a recurring basis; the time and method of transfer of funds; the responsibilities of the Secretary; and any other provisions with respect to which Eastern Shoshone and the Secretary agree in accordance with 25 U.S.C. § 5385(d);

**WHEREAS**, Eastern Shoshone may redesign or consolidate programs, services, functions, and activities (or portions thereof) included in a Funding Agreement under 25 U.S.C. § 5385 and reallocate or redirect funds for such programs, services, functions, and activities (or portions thereof) in any manner which Eastern Shoshone 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 pursuant to 25 U.S.C. § 5386(e);

**WHEREAS**, Eastern Shoshone shall not be obligated to continue performance of programs, services, functions, or activities (or portions thereof) that require expenditure of funds in excess of the amount transferred under the Compact or Funding Agreement as provided in 25 U.S.C. § 5388(k);

**WHEREAS**, nothing in this Compact or associated Funding Agreement 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 of the Indian Self-Determination and Education Assistance Act or any other applicable Federal law as specified in 25 U.S.C. § 5395(a);

**WHEREAS**, in Title V of the Indian Self-Determination and Education Assistance Act, Congress has directed that the Funding Agreement that the Secretary negotiates with Eastern Shoshone shall contain certain provisions as specified in 25 U.S.C. § 5387(a);

**WHEREAS**, Congress has directed that each provision of the Indian Self-Determination and Education Assistance Act and this Compact and associated Funding Agreements shall be liberally construed for the benefit of Indian Tribes participating in self-governance and any ambiguity shall be resolved in favor of the Tribes as provided in 25 U.S.C. § 5392(f);

**WHEREAS**, except as otherwise provided by law, the Secretary shall interpret all Federal laws, Executive Orders, and regulations in a manner that will facilitate the inclusion of programs, services, functions, and activities (or portions thereof) and funds associated therewith into this Compact and associated Funding Agreements; the implementation of this Compact and associated Funding Agreements; and the achievement of Eastern Shoshone's health goals and objectives pursuant to 25 U.S.C. § 5392(a);

**WHEREAS**, Eastern Shoshone Business Council has authorized by Resolution No. [insert] the Tribe's entry into this Compact and by Resolution No. [insert] the Tribe's entry into the associated Funding Agreement with the Secretary;

**NOW, THEREFORE**, the Secretary and Eastern Shoshone do hereby agree to enter into, undertake, and be bound by this Compact as set forth in Title V of the Indian Self-Determination and Education Assistance Act.

## **ARTICLE 1 – AUTHORITY AND PURPOSE**

**Section 1.1 – Authority.** This Compact of Self-Governance is authorized by the ISDEAA, as amended, 25 U.S.C. 5381 *et seq.*, and is hereby entered into by the Secretary, represented by the Director of the IHS, and the Eastern Shoshone Tribe, represented by its Business Council. The Director, 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 the ISDEAA or as otherwise authorized.

**Section 1.2 – Purpose.** The purpose of this Compact is to effectuate the transfer of the full control and funding to Eastern Shoshone over decision making for and administration of the programs, services, functions, and activities ("PSFAs") (or portions thereof) identified in the Funding Agreement. This Compact shall be liberally construed pursuant to 25 U.S.C. § 5392(f) to achieve the following purposes:

**1.2.1** This Compact is authorized by the ISDEAA and is intended to transfer full control and funding to Eastern Shoshone over decision making for Federal PSFAs in order to implement the Federal policy of government-to-government relationships with Indian Tribes, strengthen the Federal policy of self-determination, and uphold the United States' trust responsibility for each

Indian Tribe. This Compact promotes the autonomy of Eastern Shoshone in the field of health care.

**1.2.2** This Compact and the associated Funding Agreements enable and transfer the responsibility and authority to the Tribe to plan, conduct, consolidate, re-design, and administer PSFAs of the IHS under the terms set forth in the Compact as provided in the ISDEAA and to reallocate funds for such PSFAs according to the priorities of the Tribe, in accordance with 25 U.S.C. §§ 5385 and 5386.

**1.2.3** This Compact enables the United States to maintain and improve its unique and continuing relationship with and responsibility to Tribes through tribal self-governance and to permit an orderly transition from federal domination of programs and services. This Compact and the associated Funding Agreements transfer to Eastern Shoshone the responsibility for the PSFAs of the IHS included in the Funding Agreement and provide Eastern Shoshone with meaningful authority, control, funding, and discretion to plan, conduct, redesign, and administer PSFAs pursuant to the ISDEAA. Pub. L. 106–260, § 3, Aug. 18, 2000, 114 Stat. 712. In fulfilling its responsibilities under the Compact, the ISDEAA and the Indian Health Care Improvement Act, as amended (25 U.S.C. § 1601 *et seq.*), and consistent with Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments; the April 29, 1994, Presidential Memorandum entitled “Government-to-Government Relations with Native American Tribal Governments;” the September 23, 2004, Presidential Memorandum entitled “Government-to-Government Relationship with Tribal Governments;” the November 5, 2009, Presidential Memorandum entitled “Memorandum on Tribal Consultation;” the January 26, 2021, Presidential Memorandum entitled “Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships,” and the Department of Health and Human Services Tribal Consultation Policy, the Secretary hereby pledges that the IHS will conduct all relations with Eastern Shoshone on a government-to-government basis.

**Section 1.3 – Territory and Jurisdiction of the Eastern Shoshone Tribe of the Wind River Reservation.** The Service Delivery Area and Purchased/Referred Care Delivery Area for PSFAs carried out under this Compact shall be as defined in 72 Fed. Reg. 34262, 34266 (June 21, 2007). For the purposes of this Compact and the Funding Agreements, the Service Delivery Area and Purchased/Referred Care Delivery Area consists of all or part of the following counties in Wyoming: Hot Springs, Fremont, and Sublette.

**Section 1.4 – Applicable Law and Forums.** The parties agree that the laws of the United States shall apply to any dispute between the United States and the Eastern Shoshone Tribe arising out of the Compact or Funding Agreement. Nothing in this Compact shall be construed to diminish the applicability of the laws of Eastern Shoshone with regard to any matter or action involving a party other than the United States.

## ARTICLE 2 – TERMS, PROVISIONS, AND CONDITIONS

**Section 2.1 – Term and Effective Date.** This Compact shall be effective on execution by both parties. Provided Eastern Shoshone has a Funding Agreement in effect, this Compact 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 25 U.S.C. § 5384(d).

**Section 2.2 – Funding Amount.** Subject to the appropriation of funds by the Congress of the United States and in accordance with 25 U.S.C. § 5388, the Secretary shall provide the total amounts specified in the Funding Agreement. The Tribe is hereby assured that future funding of the Tribe’s subsequent Funding Agreements shall only be reduced pursuant to the provisions of 25 U.S.C. § 5388(d)(1)(C)(ii).

### Section 2.3 – Payment.

**2.3.1 Payment Schedule.** Payment shall be made expeditiously according to the schedule set forth in the Funding Agreement and shall include financial arrangements to cover funding during periods under continuing Congressional resolutions to the extent permitted by such resolutions.

**2.3.2 Interest on Advances.** Eastern Shoshone shall be permitted to retain interest earned on funds paid under a Funding Agreement. Interest earned on such payments shall not diminish the amount of funds Eastern Shoshone is authorized to receive under its Funding Agreement in the year earned or in any subsequent year. 25 U.S.C. § 5388(h).

**2.3.3 Investment.** All funds transferred under the Funding Agreement pursuant to this Compact shall be managed using the prudent investment standard pursuant to 25 U.S.C. § 5388(h).

**Section 2.4 – Reports to Congress.** In accordance with 25 U.S.C. § 5394(a), not later than January 1 of each year, the Secretary shall submit to the Senate Committee on Indian Affairs and the Committee on Resources of the House of Representatives a written report on the administration of the ISDEAA. Each report shall include a detailed analysis on the level of need being presently funded or unfunded for the Tribe. The contents of each report shall comply with 25 U.S.C. § 5394(b). In compiling the reports, the Secretary may not impose any reporting requirements on Eastern Shoshone not otherwise provided in the ISDEAA. The Secretary shall provide Eastern Shoshone with a draft of each report required to be submitted to Congress so that the Tribe may comment on the report. The Secretary shall include the comments of Indian tribes and tribal organizations in the final report to Congress.

## **Section 2.5 – Audits**

**2.5.1 Single Audit.** The Tribe shall submit an annual single organization-wide audit as prescribed by the Single Audit Act of 1984, as amended, 31 U.S.C. § 7501, *et seq.* 25 U.S.C. § 5386(c)(1); 42 C.F.R. §§ 137.171 and 137.172. A copy of the annual single organization-wide audit will be sent to the Designated Official of the Secretary, which is the Single Audit Clearinghouse (or its successor). 25 U.S.C. § 5386(c)(1); 42 C.F.R. §§ 137.171 and 137.172.

**2.5.2 Cost Principles.** The Tribe shall apply cost principles under the applicable Office of Management and Budget (“OMB”) circular, except as modified by 25 U.S.C. § 5325, other provisions of law, or by any exemptions to applicable OMB circulars subsequently granted by OMB. No other audit or accounting standards shall be required by the Secretary. Any claim by the Federal Government against the Tribe relating to funds received under a Funding Agreement based on any audit shall be subject to the provisions of 25 U.S.C. § 5325(f). 25 U.S.C. § 5386(c)(2).

## **Section 2.6 – Records.**

**2.6.1 Generally.** Eastern Shoshone’s practices relating to record-keeping associated with this Compact shall comply with 25 U.S.C. § 5386(d)(2) and be set forth in the Funding Agreement.

**2.6.2 Preemption.** Statutes, regulations, policies, and procedures of Eastern Shoshone that provide more protection to patient records, financial records, or personnel records shall preempt other applicable statutes, regulations, policies, and procedures, provided they do not impede the reasonable access by the Secretary required by 25 U.S.C. § 5386(d)(2).

## **Section 2.7 – Property.**

**2.7.1 In General.** The provisions of 25 U.S.C. § 5392(c) are hereby incorporated by reference into this Compact.

**2.7.2 Property Management.** Management of property under this Compact shall be in accordance with additional provisions included in the Tribe’s Funding Agreement.

### **2.7.3 Access to Property.**

**2.7.3.1 Excess/Surplus Property and Property Subject to Destruction.** In accordance with 25 U.S.C. § 5392(c)(3), subject to Eastern Shoshone’s request, the Secretary will make best efforts to acquire such excess and surplus property for donation to Eastern Shoshone as may be appropriate to support the PSFAs designated in the Compact and associated Funding Agreement. To the extent the IHS has been provided notice, prior to the destruction of Federal property which would otherwise be declared surplus or excess and which is located within the service area of Eastern Shoshone, the Secretary, if previously requested by Eastern Shoshone, shall provide notice of such proposed destruction to the Tribe. Such notice shall inform Eastern Shoshone 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 Eastern Shoshone regarding transfer of the property, rather than destruction, and, if not the responsible official, the Secretary will assist the Tribe in communicating information to the responsible official.

**2.7.3.2 Access to Federal Property.** To the extent IHS has been provided notice of the availability of Federal property that may be made available to Tribes under the ISDEAA and to the extent notice is provided to other Tribes, the Secretary shall provide such notice to Eastern Shoshone.

**2.7.3.3 Participation in “Project TRANSAM.”** The Tribe shall be notified of and authorized (to the extent the IHS has authority to provide authorization) to participate in property screenings associated with “Project TRANSAM” (or any successor project) by the IHS. Such notification and inventory of available assets may be made by publishing notice on a webpage available to the Tribe.

**2.7.4 Leases.** Upon the request of Eastern Shoshone, the Secretary shall enter into leases with Eastern Shoshone if Eastern Shoshone has title to, a leasehold interest in, or a trust interest in, a facility used by Eastern Shoshone for the administration and delivery of services under the ISDEAA. 25 U.S.C. § 5324(I).

**Section 2.8 – Effect of Circulars, Policies, Manuals, Guidances, and Rules.** Pursuant to 25 U.S.C. § 5397(e), unless expressly agreed to by Eastern Shoshone in this Compact or associated Funding Agreements, Eastern Shoshone shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the IHS, except for the eligibility provisions of 25 U.S.C. § 5324(g) and regulations promulgated under 25 U.S.C. § 5397 (*see* 42 C.F.R. Part 137), unless such regulations have been waived pursuant to 25 U.S.C. § 5392(b) (*see* 42 C.F.R. Part 137 Subpart J).

## **Section 2.9 – Disputes.**

**2.9.1 Application of Title V of the Indian Self-Determination and Education Assistance Act.** All disputes between the IHS and Eastern Shoshone under this Compact shall be subject to the ISDEAA and the provisions of 25 U.S.C. § 5331 and all remedies provided for therein. Actions and proceedings to enforce Eastern Shoshone’s rights and the Secretary’s obligations under this Compact shall be subject to the Equal Access to Justice Act, Pub. L. 96-481, 94 Stat. 2322, as amended, to the extent allowed by Federal statutes and regulations. *See* 42 C.F.R. § 137.450.

**2.9.2 Administrative Dispute Resolution Act.** In the alternative, the IHS and Eastern Shoshone may use the processes authorized and encouraged in the Administrative Dispute Resolution Act, 5 U.S.C. § 571, *et seq.*, for more informal resolution of disputes arising under this Compact and associated Funding Agreements.



## **Section 2.10 – Subsequent Funding Agreements.**

**2.10.1 Initiation of Negotiations.** The negotiation process for subsequent Funding Agreements shall begin within thirty (30) days of a request by Eastern Shoshone (or at some other date agreed upon by the parties). The Secretary will provide, to the extent such information is available, financial and other information relevant to the PSFAs carried out by Eastern Shoshone at least sixty (60) days prior to the end of the fiscal year.

**2.10.2 Subsequent Funding Agreement.** Pursuant to 25 U.S.C. § 5385(e) and 42 C.F.R. §§ 137.55–137.56, absent notification from Eastern Shoshone that it is withdrawing or retroceding the operation of one or more PSFAs (or portions thereof) identified in a Funding Agreement, or unless otherwise agreed to by the parties, each Funding Agreement shall remain in full force and effect until a subsequent funding agreement is executed and the terms of the subsequent Funding Agreement shall be retroactive to the end of the term of the preceding Funding Agreement.

**Section 2.11 – Health Status Reports.** In accordance with 25 U.S.C. § 5387(a)(1), Eastern Shoshone 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 Eastern Shoshone in its Funding Agreement. Such reporting may impose only minimal burdens on Eastern Shoshone and such requirements must have been promulgated under 25 U.S.C. § 5397.

## **Section 2.12 – Transportation and Other Supply Sources.**

**2.12.1 Use of Motor Vehicles.** At the Tribe's request, pursuant to 25 U.S.C. § 5324(k) and subject to agreement of the General Services Administration ("GSA"), the Secretary shall make best efforts to acquire Interagency Motor Pool ("IMP") vehicles and related services for performance of PSFAs under this Compact and associated Funding Agreements in accordance with GSA regulations. The Tribe will satisfy any reporting requirements to the extent provided for in the Tribe's agreements with the GSA, which are not attached to this Compact or Funding Agreement and are not incorporated by reference into this Compact or Funding Agreement.

**2.12.2 Other Supply Sources.** In the event the Tribe elects to carry out the Compact or Funding Agreement with the use of Federal personnel, Federal supplies (including supplies available from Federal warehouse facilities), Federal supply sources (including lodging, airline transportation, and other means of transportation including the use of interagency motor pool vehicles) or other Federal resources (including supplies, services, and resources available to the Secretary under any procurement contracts in which the Department is eligible to participate), the Secretary shall acquire and transfer such personnel, supplies, or resources to the Tribe. 25 U.S.C. § 5388(e).

**Section 2.13 – Limitation of Costs.** Eastern Shoshone shall not be obligated to continue performance of PSFAs (or portions thereof) set forth in the Funding Agreement that require an expenditure of funds in excess of the amount transferred under the Compact or Funding Agreement. If, at any time, Eastern Shoshone has reason to believe that the total amount provided

for a specific activity in the Compact or Funding Agreement is insufficient, Eastern Shoshone may provide notice of such insufficiency to the Secretary. If the Secretary does not increase the amount of funds transferred under the Funding Agreement, Eastern Shoshone may suspend performance of the activity until such time as additional funds are transferred, provided the Tribe gave reasonable notice to the Secretary. 25 U.S.C. § 5388(k).

**Section 2.14 – Reassumption.** The Secretary may reassume a PSFA (or portions thereof) carried out by Eastern Shoshone under this Compact and associated Funding Agreements, and the funding associated with such PSFA (or portion thereof), pursuant to 25 U.S.C. § 5387(a)(2) and the regulations at 42 C.F.R. Part 137, Subpart M.

### ARTICLE 3 – OBLIGATIONS OF EASTERN SHOSHONE

**Section 3.1 – Compact Programs.** The PSFAs (or portions thereof) that will be the responsibility of Eastern Shoshone under this Compact are identified in the Tribe’s Funding Agreement.

**Section 3.2 – Eligibility for Services.** The health care PSFAs (or portions thereof) that the Tribe is authorized to provide under this Compact and associated Funding Agreements shall be carried out using the eligibility criteria as set out in the form of 42 C.F.R. Part 136, including the criteria therein defining which Indians are eligible for such services, subject to the additional provision of 25 U.S.C. § 1680c(a)–(d) as to provision of services to eligible individuals who are not Indians. Services will be provided to non-beneficiaries (*i.e.*, persons who are not Alaska Native or American Indian) on a fee-for-service basis in accordance with and subject to the provisions of Section 813(c) of the Indian Health Care Improvement Act (“IHCA”), 25 U.S.C. § 1680c, as amended, and the Resolution of the Tribe. The Tribe's Resolution authorizing the provision of such services is attached hereto and fully incorporated by reference herein as Exhibit C [insert].

**Section 3.3 – Reallocation, Redesign, and Consolidation.** In accordance with 25 U.S.C. § 5386(e), Eastern Shoshone may redesign or consolidate PSFAs (or portions thereof) included in the Funding Agreement under 25 U.S.C. § 5385 and reallocate or redirect funds for such PSFAs (or portions thereof) in any manner that the Tribe 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 3.4 – Consolidation with Other Programs.** Eastern Shoshone may consolidate PSFAs and associated funds identified in its Funding Agreement with other PSFAs provided with its own funds or funds from other sources, provided that the PSFAs are allowable for inclusion in a funding agreement under 25 U.S.C. § 5385. In cases in which the Tribe consolidates PSFAs under this Section 3.4, Eastern Shoshone shall not be required to separate dollars or PSFAs so long as the Tribe can provide sufficient data to permit an acceptable program and financial audit to be conducted.

**Section 3.5 – Program Income, including Medicare/Medicaid.** All Medicare, Medicaid, or other program income earned by Eastern Shoshone shall be supplemental funding to that

negotiated in the Funding Agreement and Eastern Shoshone may retain all such income, including Medicare/Medicaid and expend such funds in the current year or in future years except to the extent that the IHCA (25 U.S.C. § 1601 *et seq.*) provides otherwise for Medicare and Medicaid receipts. Such additional funds shall not result in any offset or reduction in the negotiated amount of the Funding Agreement. 25 U.S.C. § 5388(j).

**Section 3.6 – Carryover of Funds.** All funds paid to Eastern Shoshone in accordance with this Compact or associated Funding Agreements shall remain available until expended. In the event the Tribe elects to carry over funding from one year to the next, such carryover shall not diminish the amount of funds Eastern Shoshone is authorized to receive under its Funding Agreement in that or any subsequent fiscal year. 25 U.S.C. § 5388(i). Any funds and the corresponding PSFAs (or portions thereof) that are carried over will be expended in accordance with the applicable provisions of the Funding Agreement in effect at the time of the expenditure and will not be subject to the provisions of any previous funding agreements.

**Section 3.7 – Matching Funds.** All funds provided under this Compact or associated Funding Agreements shall be treated as non-Federal funds for purposes of meeting matching or other cost participation requirements under any other Federal or non-Federal program pursuant to 25 U.S.C. § 5392(d).

#### ARTICLE 4 – OBLIGATIONS OF THE UNITED STATES

**Section 4.1 – Trust Responsibility.** The Secretary is prohibited from waiving, modifying, or diminishing in any way the trust responsibility of the United States with respect to Eastern Shoshone and individual Indians that exists under treaties, Executive Orders, and other laws or court decisions. 25 U.S.C. § 5387(g).

#### **Section 4.2 – Programs Retained.**

**4.2.1 Secretarial Responsibility.** The Secretary hereby retains the responsibility for the PSFAs (or portions thereof) that are not specifically assumed by Eastern Shoshone through its Funding Agreement, and Eastern Shoshone shall continue to be entitled to the full benefit of those PSFAs retained by the IHS. In cases where a portion of tribal shares may have been transferred to Eastern Shoshone, the parties agree that Eastern Shoshone may receive a correspondingly diminished level of services provided to it by the IHS.

**4.2.2 Eligibility for New Programs, Service Increases, and Non-Recurring Resources.** In accordance with 25 U.S.C. § 5386(h), Eastern Shoshone shall be eligible for new PSFAs of the Secretary on the same basis as other Tribes eligible to receive PSFAs and funding. When new services, funding, or other resources become available to all tribes, the Secretary shall advise the Tribe of such.

**4.2.3 Information regarding Services of the Indian Health Service.** At the written request of Eastern Shoshone, the IHS shall provide Eastern Shoshone with a written list of the PSFAs that continue to be operated by the IHS that Eastern Shoshone is eligible to assume. The

Secretary will cooperate with requests from Eastern Shoshone to provide information, including financial data, relevant to the IHS's ongoing PSFAs (or portions thereof). The Secretary will cooperate with Eastern Shoshone to facilitate the inclusion of IHS retained PSFAs in future Funding Agreements.

### **Section 4.3 – Financial and Other Information.**

**4.3.1** To assist Eastern Shoshone in monitoring compliance with 25 U.S.C. § 5388(c), the Secretary shall provide information to Eastern Shoshone, on the same basis as it provides information to other Tribes:

**4.3.1.1** reports from Headquarters, the Office of Tribal Self-Governance, and the Billings Area Office, concerning funds provided to support PSFAs provided by Eastern Shoshone under this Compact and funds retained by the IHS to support PSFAs retained by the IHS; and

**4.3.1.2** prompt notice of any new PSFAs for which Eastern Shoshone may be eligible, including the funding available for such PSFAs.

**4.3.2** The Secretary shall prepare and supply, no later than sixty (60) days prior to the end of the fiscal year in which the request is made, relevant financial information and comply with the Tribe's request for information needed to determine funds that may be available for a successor Funding Agreement.

**Section 4.4 – Savings.** To the extent that PSFAs (or portions thereof) carried out by Indian Tribes under the ISDEAA reduce the administrative or other responsibilities of the Secretary with respect to the operation of Indian programs and result in savings that have not otherwise been included in the amount of tribal shares and other funds determined under 25 U.S.C. § 5388(c), the Secretary shall make such savings available to Indian Tribes, including Eastern Shoshone, for the provision of additional PSFAs to program beneficiaries in a manner equitable to directly served, contracted, and compacted programs. 25 U.S.C. § 5387(f).

## **ARTICLE 5 – OTHER PROVISIONS**

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

**Section 5.2 – Indian Preference in Employment, Contracting, and Sub-Contracting.** Consistent with 25 U.S.C. § 5307(c), Eastern Shoshone's tribal employment and contract

preference laws shall govern with respect to Eastern Shoshone's administration of the Compact and associated Funding Agreements or portions thereof.

### **Section 5.3 – Federal Tort Claims Act Coverage; Insurance.**

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

**5.3.2 Case-by-Case Determination.** Eastern Shoshone understands that whether the FTCA applies in any particular case is decided on an individual case-by-case basis by the United States Department of Justice and subsequently by the Federal courts.

**5.3.3 Records.** Should the FTCA apply to a claim against or in litigation involving Eastern Shoshone's employees, Eastern Shoshone will promptly provide all documents necessary for the defense of such case. All such documents, and any related documents, shall be maintained throughout the pendency of the claim, case, and all appeals.

**5.3.4 Insurance.** Eastern Shoshone may, without approval of the Secretary, expend funds provided under this Compact and associated Funding Agreements to purchase insurance and indemnification, including insurance covering the risk of loss or damage to property used in connection with this Compact and associated Funding Agreements without regard to the ownership of such property, to the extent that the expenditure of the funds is supportive of the PSFAs carried out by Eastern Shoshone under this Compact and associated Funding Agreements.

**5.3.5 Personal Services Contracts.** Personal services contracts shall be covered under this provision to the extent provided under 25 U.S.C. § 5321(d).

**Section 5.4 – Compact Amendments.** Amendment to this Compact must be in writing and be signed by the authorized signatory for Eastern Shoshone and the Secretary.

**Section 5.5 – Construction Funding.** Consistent with 25 U.S.C. § 5389, the Tribe may carry out construction projects or programs in accordance with Title I or V of the ISDEAA, the IHCA, Pub. L. 94-437, and Pub. L. 86-121. *See also* 42 C.F.R. § 137.272.

**Section 5.6 – Officials Not to Benefit.** No member of the United States Congress shall be admitted to any share or part of any contract executed pursuant to this Compact, or to any benefit

that may arise from such Compact. This Section 5.6 may not be construed to apply to any contract with a third party entered into under this Compact if such contract is made with a corporation for the general benefit of the corporation. 25 U.S.C. § 5329(c)(e)(3).

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

**Section 5.8 – Use of Federal Employees.** The provisions of 25 U.S.C. § 5323 shall apply to individual Memoranda of Agreement and Inter-Governmental Personnel Act Agreements entered into by the IHS to assign or detail individuals to Eastern Shoshone under this Compact and associated Funding Agreements. Individual Memoranda of Agreement and Intergovernmental Personnel Act Agreements entered into under this Section 5.8 shall not be incorporated by reference into this Compact or a Funding Agreement under this Compact.

**Section 5.9 – Extraordinary or Unforeseen Events.** This Compact is intended to obligate Eastern Shoshone to carry out all usual and ordinary functions respecting the PSFAs for which it is undertaking to assume responsibility under its Funding Agreements. In the event that major unforeseen or extraordinary events occur, as jointly identified by Eastern Shoshone and the Secretary, with consequences beyond the control of the Tribe, the IHS will make resources available to the Tribe to deal with the unforeseen circumstance on the same basis as they would have been available to non-compact Tribes or the IHS had they encountered a similar circumstance.

**Section 5.10 – Mature Contractor Status upon Compact Termination.** In accordance with 25 U.S.C. § 5386(g)(3), should Eastern Shoshone elect to convert all or some of the PSFAs operated under the Compact back to contract status under Title I, the resulting self-determination contract shall be a mature self-determination contract. Such conversion would occur only at the end of the Compact term, on another date mutually acceptable to Eastern Shoshone and the Secretary, or as otherwise provided in this Compact, and will be implemented in a manner which avoids any interruption of services.

**Section 5.11 – Sovereign Immunity.** Nothing in this Compact or in any Funding Agreement shall be construed as a waiver by Eastern Shoshone or the United States of America of sovereign immunity.

**Section 5.12 – Secretarial Interpretation and Rules of Construction.** Except as otherwise provided by law, the Secretary shall interpret all Federal laws, Executive Orders, and regulations in a manner that will facilitate the inclusion of PSFAs (or portions thereof) and funds associated therewith, into this Compact and the associated Funding Agreements; the implementation of this Compact and the associated Funding Agreements; and the achievement of Eastern Shoshone's health goals and objectives. In accordance with 25 U.S.C. § 5392(a), each provision of the ISDEAA and of this Compact and associated Funding Agreements shall be liberally construed for

the benefit of the Tribe and any ambiguity shall be resolved in favor of the Tribe. 25 U.S.C. § 5392(f).

**Section 5.13 – Severability.**

**5.13.1** Except as provided in this Section 5.13.1, this Compact shall not be considered invalid, void, or voidable if any section or provision of this Compact is found to be invalid, unlawful, or unenforceable by a court of competent jurisdiction.

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

**Section 5.14 – Applicability of Title I Provisions.** At the request of Eastern Shoshone, any provision of Title I not already specified in 25 U.S.C. § 5396(a), to the extent such provision does not conflict with a provision in the ISDEAA, shall be made part of this Compact and the associated Funding Agreements. The Secretary is obligated to include such provision at the option of Eastern Shoshone. If such provision is incorporated, it shall have the same force and effect as if it were set out in full in the ISDEAA and in the Funding Agreement. In the event Eastern Shoshone requests such incorporation at the negotiation stage of this Compact or Funding Agreement, such incorporation shall be deemed effective immediately and shall control the negotiation and resulting Compact and Funding Agreement. 25 U.S.C. § 5396(b).

**Section 5.15 – Purchases From the Indian Health Service.** With respect to functions transferred by the IHS to Eastern Shoshone under this Compact or associated Funding Agreements, the IHS shall provide goods and services to Eastern Shoshone 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 Eastern Shoshone pursuant to the ISDEAA, may be credited to the same or subsequent appropriation account which provided the funding, and such amounts shall remain available until expended. 25 U.S.C. § 5388(f).

**Section 5.16 – Consolidation.** Eastern Shoshone will be responsible for performing the PSFAs as specified in the applicable Funding Agreements, as provided for in Section 6.3 of this Compact. To the extent a PSFA and funds included within a contract or grant entered into pursuant to 25 U.S.C. §§ 5321–5322 are 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 carryover funds) will be re-obligated to Eastern Shoshone under a Funding Agreement negotiated under this Compact.

**ARTICLE 6 – ATTACHMENTS**

**Section 6.1 – Map of the Wind River Reservation.** A map of the Wind River Reservation is attached as Exhibit A and incorporated by reference.

**Section 6.2 – Resolutions.**

**6.2.1** Resolution No. [insert] of the Eastern Shoshone Business Council authorizing execution of this Compact is attached as Exhibit B.

**6.2.2** Resolution No. [insert] of the Eastern Shoshone Business Council authorizing the provision of health services to non-IHS beneficiaries under IHS-funded programs is attached as Exhibit C.

**Section 6.3 – Funding Agreement.** Each Funding Agreement entered into between the Secretary of Health and Human Services, represented by the Director of the IHS, and Eastern Shoshone shall be governed by this Compact. Each Funding Agreement entered into pursuant to this Compact shall be attached hereto and incorporated by reference as Exhibit D.



COMPACT BETWEEN THE EASTERN SHOSHONE TRIBE OF THE WIND RIVER RESERVATION AND  
THE UNITED STATES OF AMERICA  
EFFECTIVE [INSERT DATE]

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

**EASTERN SHOSHONE TRIBE OF THE WIND  
RIVER RESERVATION, WYOMING**

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Roselyn Tso  
Director,  
Indian Health Service

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John St. Clair  
Chairman,  
Eastern Shoshone Business Council

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Date

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Date

DRAFT

EXHIBIT A

Wind River Reservation

July 5, 2023

