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**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ALASKA**

ALASKA NATIVE TRIBAL HEALTH)
 CONSORTIUM,)

Plaintiff,)

v.)

ROBERT F. KENNEDY, JR.,)
 Secretary, U.S. Department of Health)
 and Human Services,)

and)

UNITED STATES OF AMERICA,)

Defendants.)

Case No: 3:21-cv-00260-HRH

THIRD AMENDED COMPLAINT

I. INTRODUCTION

1. This action seeks damages for the failure of the Secretary of Health and Human Services, through the Indian Health Service (IHS), to pay the Alaska Native Tribal Health Consortium (ANTHC) certain “contract support costs” due under ANTHC’s contract with IHS in Fiscal Years (FY) 2014 and 2016 through 2022. ANTHC’s rights arise under its contract and the statute under which the contract was awarded, the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 5301–5423 (ISDA).

2. This action follows several Supreme Court decisions finding the federal government’s failure to pay full contract support costs to contractors like ANTHC to be contrary to law and a breach of contract. *See Salazar v. Ramah Navajo Chapter*, 567 U.S. 182, 192-94 (2012) (Bureau of Indian Affairs contracts); *Arctic Slope Native Ass’n v. Sebelius*, 133 S. Ct. 22 (2012), *on remand* 501 Fed. App’x 957, 959 (Fed. Cir. 2012) (*Arctic Slope II*) (IHS contracts); *Cherokee Nation v. Leavitt*, 543 U.S. 631, 636-38 (2005) (consolidated cases) (IHS contracts).

3. This action also follows the Supreme Court’s recent decision in *Becerra v. San Carlos Apache Tribe*, 602 U.S. 222 (2024), holding that IHS is required to pay full contract support costs to tribal contractors to support the portion of their ISDA health programs funded by third-party revenues. *Id.* at 243. In December 2024, IHS issued guidance explaining its approach to implementation of the *San Carlos Apache Tribe* decision.

4. The claims covered by this Complaint assert that by failing to pay ANTHC's full contract support cost requirement, including the portion of those costs associated with the expenditure of third-party revenues, the Secretary breached his legal obligations to ANTHC. ANTHC seeks as damages the unpaid contract support cost funds which the Secretary should have paid in FY 2014 and 2016-2022. ANTHC also contests IHS's claims that IHS overpaid ANTHC's contract support cost requirements in FY 2020 and 2022.

II. JURISDICTION

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1362; 25 U.S.C. §§ 5331(a), 5531(d); and 41 U.S.C. § 7104 of the Contract Disputes Act (CDA).

III. PARTIES

6. The Alaska Native Tribal Health Consortium (ANTHC) is a tribal organization and at all relevant times carried out a self-governance compact and associated funding agreement with the Secretary of Health and Human Services pursuant to Title V of the ISDA, 25 U.S.C. §§ 5381–5399 and section 325 of Pub. L. No. 105-83, 111 Stat. 55 (1997).

7. Robert F. Kennedy, Jr. is the Secretary of the U.S. Department of Health and Human Services (DHHS). Secretary Kennedy exercises limited responsibilities delegated to him by Congress pursuant to the ISDA and other applicable law, including authority to enter into contracts on behalf of the United States with Indian tribes and tribal organizations pursuant to the ISDA and other applicable law. Secretary Kennedy has further delegated

some of these responsibilities to officials of the Indian Health Service (IHS), an agency located within DHHS. As used throughout this Complaint (and unless context commands otherwise), the terms “Secretary,” “DHHS,” and “IHS” are used interchangeably.

8. The United States of America is responsible for payment of all contracts with the Federal government. Pursuant to provisions of the CDA and the ISDA, the United States has waived its sovereign immunity from suit for breach of contract actions.

IV. FACTS AND GENERAL ALLEGATIONS

A. The Contract Documents.

9. During FY 2014 and 2016 through 2022, ANTHC operated various Federal health care programs, functions, services, and activities pursuant to Compact No. 58G990058 and its associated funding agreement (collectively referred to in this Complaint as the “contract”).

10. Pursuant to the contract, in FY 2014 and 2016-2022 ANTHC co-managed the Alaska Native Medical Center (ANMC), a 173-bed tertiary-care hospital located in Anchorage, Alaska, through which it provides comprehensive medical services (including inpatient hospital care and specialty care) for the Alaska Tribal Health System. These services included critical care, emergency medicine, internal medicine, ophthalmology, orthopedic, otolaryngology, surgery, cardiology, hematology-oncology, clinical and anatomic laboratory, imaging, pharmacy, respiratory care, and social services. Further, ANTHC provided wellness programs, disease research and prevention, and rural provider

training, and supported efforts in public health, traditional foods and nutrition, epidemiology, environmental health, and dental health education (among other programs).

11. The programs described in paragraph 10 of this Complaint were operated pursuant to the Alaska Tribal Health Compact (“the Compact”) with IHS.¹ Ex. A. The Compact is the basic contract document at issue in this case. The terms of the Compact are required by and inextricably intertwined with the ISDA. The Compact states that it “shall be liberally construed to achieve its purposes[.]” Compact, art. I, § 2. Similarly, Title V, which governs the Compact, provides that “[e]ach provision of [Title V] and each provision of a compact or funding agreement shall be liberally construed for the benefit of the Indian tribe participating in self-governance and any ambiguity shall be resolved in favor of the Indian tribe.” 25 U.S.C. § 5392(f).

12. The Compact was written 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.” Compact, art. I, § 2(a). It was also meant to “promote[] the autonomy of the Tribes in Alaska in the realm of health care.” *Id.* Consistent with this purpose, the Compact relies heavily on the provisions of the ISDA.

13. The core purpose of the Compact between IHS and ANTHC is:

¹ The Alaska Tribal Health Compact has been frequently amended and restated since the first version went into effect on October 1, 1994. Relevant to the claims presented here is the FY 2011 version that went into effect on October 1, 2010, and all citations in this Complaint are to that version.

to enable [ANTHC] 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 [ANTHC]; to enhance the effectiveness and long-term financial stability of [ANTHC]; and to streamline the federal Indian Health Service bureaucracy.

Compact, art. I, § 2(b).

14. The contract documents also include ANTHC's Funding Agreements (FAs). Funding agreements can cover single or multi-year periods and may be amended throughout the year to take account of appropriations changes and new funds that are made available. *See* 25 U.S.C. § 5385(e) (“[E]ach funding agreement shall remain in full force and effect until a subsequent funding agreement is executed.”). In FY 2014, ANTHC operated pursuant to the multiyear FY 2011-2015 FA for its Title V funds. Ex. B. In FY 2016 through 2022, ANTHC operated pursuant to the multiyear FY 2016-2024 FA. Ex. F. ANTHC's FAs were incorporated in their entirety into the Compact. *See* Compact, art. II, § 2(c).

15. The contract documents that are controlling for the claims asserted here are the Alaska Tribal Health Compact, the FAs in effect for each year under the Compact, modifications to those documents, and the various statutory and administrative provisions incorporated by law into the contract documents, including the ISDA.

B. The Contract Agreement.

16. ANTHC's contractual obligation was to administer designated health care programs and to provide certain health care services and functions previously provided by IHS. IHS's contractual obligation to ANTHC was to make certain specified payments to

ANTHC, including payments required for ANTHC to carry out its administrative duties and other costs of carrying out the Compact.

17. ANTHC's contract was authorized by Title V of the ISDA, 25 U.S.C. §§ 5381-5399. Section 508(c) of Title V of the ISDA, 25 U.S.C. § 5388(c), requires that "[t]he Secretary shall provide funds under a funding agreement under this subchapter in an amount equal to the amount that the Indian tribe would have been entitled to receive under self-determination contracts under this chapter, including amounts for direct program costs specified under section 5325(a)(1) of this title and amounts for contract support costs specified under section 5325(a) (2), (3), (5), and (6)" This provision entitled ANTHC to the same amount it would have received had it been operating a contract with IHS that was awarded under Title I of the Act, 25 U.S.C. §§ 5321-5332, and specifically the funding provisions set forth in 25 U.S.C. § 5325(a). Thus, at all relevant times, 25 U.S.C. § 5325(a)(2), (3), and (5), and related funding provisions of Title I of the ISDA, controlled the Secretary's funding obligations under the contract. These are the same provisions that the Supreme Court construed in *Cherokee Nation, Ramah*, and *San Carlos*, and that the Federal Circuit construed in *Arctic Slope II*.

18. The ISDA and ANTHC's contract required that IHS pay contract support costs. 25 U.S.C. § 5325(a)(2) provides that "[t]here shall be added to the amount required by paragraph (1) [i.e., the program amount] contract support costs which shall consist of an amount for the reasonable costs for activities which must be carried on by a tribal

organization as a contractor to ensure compliance with the terms of the contract and prudent management”

19. Contract support costs are mostly “administrative expenses,” *Cherokee Nation*, 543 U.S. at 634, although they more precisely fall into one of two subcategories: (1) indirect administrative (or overhead) contract support costs “such as special auditing or other financial management costs,” *id.* at 635 (citing § 5325(a)(3)(A)(ii)), and (2) direct contract support costs for certain annually recurring costs attributable directly to the personnel and facilities employed to carry out the contracted IHS programs “such as workers’ compensation insurance,” *id.* (citing § 5325(a)(3)(A)(i)).

20. The ISDA defines these costs with particularity:

The contract support costs that are eligible costs for the purposes of receiving funding under this chapter shall include the costs of reimbursing each tribal contractor for reasonable and allowable costs of—

(i) direct program expenses for the operation of the Federal program that is the subject of the contract, and

(ii) any additional administrative or other expense incurred by the governing body of the Indian Tribe or Tribal organization and any overhead expense incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract,

except that such funding shall not duplicate any funding provided under subsection (a)(1) of this section.²

25 U.S.C. § 5325(a)(3)(A). The focus of this statutory provision is the “Federal program” that is the subject of the contract.

² As amended by the 2020 PROGRESS Act, Pub. L. No. 116-180, § 204(1)(B) (2020).

21. The foregoing provision of law obligates IHS to pay (1) all of the “reasonable and allowable costs” associated with additional “direct program expenses for the operation of the Federal program” under contract, plus (2) all of the “reasonable and allowable costs” for “any additional administrative or other expense related to the overhead incurred by the tribal contractor in connection with the operation of the [contracted] Federal program.” *Id.* The only limitation on this payment obligation is that a contract support cost payment may not duplicate a program payment already made to the contractor (*i.e.*, the amount “provided under subsection (a)(1) of [§ 5325]”).

22. Section 5321(g) of the ISDA mandates that the foregoing provision (along with every other provision of the Act and every provision of ANTHC’s contract with IHS) “be liberally construed for the benefit of the Indian Tribe participating in self-determination, and any ambiguity shall be resolved in favor of the Indian Tribe.” The Supreme Court has interpreted this language to mean that the government “must demonstrate that its reading [of the ISDA] is clearly required by the statutory language.” *Ramah*, 567 U.S. at 194 (quoting § 5329(c) (model agreement § 1(a)(2)) (citation updated)).

23. The ISDA directs that “[u]pon the approval of a . . . contract, the Secretary shall add to the contract the full amount of funds to which the contractor is entitled under [§ 5325(a)], subject to adjustments for each subsequent year that such tribe . . . administers a Federal program, function, service, or activity under such contract.” *Id.* § 5325(g); *see*

id. § 5396(a) (providing that § 5325(a)-(k) “shall apply to compacts and funding agreements authorized by [Title V]”).

24. The ISDA permits, but does not require, that contract support costs be determined in a negotiation between the parties. *Id.* § 5325(a)(3)(C) (Tribes “shall have the option to negotiate with the Secretary the amount of funds that the tribe or tribal organization is entitled to receive under such contract pursuant to this paragraph.”). The Secretary’s duty to add full contract support costs to a contract is not contingent upon such a negotiation.

25. The ISDA delegates to the Secretary limited regulatory and discretionary authority, but this delegated rulemaking authority does not include authority to issue regulations concerning contract support costs. *See Ramah Navajo Sch. Bd. v. Babbitt*, 87 F.3d 1338, 1344 (D.C. Cir. 1996) (“Congress has clearly expressed in the [ISDA] . . . its intent to circumscribe as tightly as possible the discretion of the Secretary,” and “[t]he statute itself reveals that not only did Congress *not* intend to commit allocation decisions to agency discretion, it intended quite the opposite; Congress left the Secretary with as little discretion as feasible in the allocation of [contract support costs]” (citation omitted)).

26. Title V provides that, “[u]nless expressly agreed to by the participating Indian tribe in the compact or funding agreement, the participating Indian tribe shall not be subject to any agency circular, policy, manual, guidance, or rule adopted by the Indian Health Service, except for the eligibility provisions of section 5324(g) of this title and regulations promulgated under this section.” 25 U.S.C. § 5397(e). This provision was

expressly incorporated into ANTHC's contract. *See* Compact, art. II, § 9(a)-(b); FY 2011-2015 FA § 8; FY 2016-2024 FA § 8. The Secretary's Title V regulations do not address contract support cost issues, other than to note that the Secretary must provide contract support costs as specified in the ISDA. 42 C.F.R. §§ 137.79, 137.143. In sum, the ISDA provides for full recovery of all contract support costs incurred in carrying out the Federal programs that are the subject of a contract.

27. During the fiscal years at issue here, IHS calculated and paid contract support costs pursuant to Chapter 6-3 of the Indian Health Manual ("IHS Manual" or "IHM"). *See* Ex. C, Indian Health Serv., *Indian Health Manual*, pt. 6, ch. 3 (2007). This chapter explains how IHS determines contract support cost requirements, but it is not binding on tribal contractors. *Id.* § 6-3.1(A); *see also* 25 C.F.R. § 900.5 ("Except as specifically provided in the [ISDA] . . . an Indian tribe or tribal organization is not required to abide by any unpublished requirements such as program guidelines, manuals, or policy directives of the Secretary . . .").

28. The IHS Manual recognizes the statutory contract support cost provisions, while providing additional "guidance to both Tribal and Agency personnel" in the negotiation of contract support costs. IHM § 6-3.1(A). The version of the IHS Manual in effect during FY 2014 acknowledged that:

Throughout the operation of the program by the awardee, *total contract costs (including CSC) are eligible to be paid* as either direct or indirect costs. Since Tribes often operate more than one program, many of the costs incurred by the awardee are paid through an indirect cost allocation process, usually negotiated by the "Federal Agency" as identified under the applicable [OMB] Circular.

....

[The ISDA] authorizes awardees to be paid CSC costs whether they are “indirect” in nature (benefitting multiple programs) or additional costs associated with operating a single program, except that such funding shall not duplicate any funding provided under [the Secretarial amount].

Id. § 6-3.2(B) (emphasis added).³

29. Contract support costs classified as administrative and overhead costs are also known as indirect contract support costs. These costs are typically calculated by reference to an indirect cost rate. An indirect cost rate is a common accounting tool that recipients of federal funds employ to allocate administrative and overhead costs across multiple programs supported by pooled administrative activities. *Rumsfeld v. United Techs. Corp.*, 315 F.3d 1361, 1363 (Fed. Cir. 2003). Such pooled activities typically include financial management and accounting systems, information technology systems, insurance, facilities, procurement activities, and personnel management systems.

30. An indirect cost rate is calculated by pooling these administrative costs into an overarching “indirect cost pool,” and then dividing that pool by the total amount of direct costs of all programs that are supported, served, or benefited by the pool. This calculation results in a ratio known as an indirect cost rate, which is then applied to the direct cost base of each program supported by the pool.

³ An updated version of the Manual was released in October 2016 and contains similar language. See Updated Indian Health Manual, § 6-3.2B, <https://www.ihs.gov/ihm/pc/part-6/p6c3/>.

31. To calculate the amount of indirect contract support costs IHS must reimburse ANTHC, IHS identifies the appropriated funds that ANTHC spends for the operation of the Federal programs that are under contract with IHS, and calls this “the IHS direct cost base.” It then allocates a proportionate share of ANTHC’s indirect cost pool to this IHS direct cost base (i.e., [IHS direct cost base] x [ANTHC indirect cost rate]). This method allocates a share of ANTHC’s pooled indirect costs to cover the operation of ANTHC’s contract with IHS funded with IHS appropriations. A portion of the remainder of ANTHC’s pooled indirect costs are allocated to other programs carried out by ANTHC (such as programs funded by grants from the State of Alaska, from private foundations, or from other federal agencies). Under IHS’s system, there is no agency that can be allocated the portion of ANTHC’s pooled indirect costs supporting ANTHC’s operation of contracted Federal programs that are funded with revenues earned under the contract with IHS.

32. When IHS runs Federal programs providing health care to Indian people, it uses both appropriated funds from Congress and funds collected from Medicare, Medicaid, and private insurers. *See* Dep’t of Health & Human Servs., FY 2014 IHS Congressional Budget Justification, at CJ-14, 141 (available at <https://www.ihs.gov/sites/budgetformulation/themes/responsive2017/documents/FY2014BudgetJustification.pdf>). That is, IHS bills Medicare, Medicaid, and private insurers, it collects revenues from those sources, and it then uses those revenues to operate larger Federal programs serving Indian people. *See* 42 U.S.C. §§ 1395–1395///, 1396–1396w-5,

1397aa–1397mm; *see also* H.R. Rep. No. 94-1026, at 108 (1976) (“[T]he Committee firmly expects that funds from Medicare and Medicaid will be used to expand and improve current IHS health care services and not to substitute for present expenditures.”). Revenue from these programs is generally called “third-party revenues,” and the generation and expenditure of these revenues is an integral part of IHS operations.

33. Similarly, when tribal contractors such as ANTHC assume operation of federal programs pursuant to the ISDA, they also use both appropriated funds and third-party revenues to fund the program. Tribal contractors are required by the terms of their contracts and applicable federal law to bill and collect revenues from third-party payers such as Medicare, Medicaid, and private insurers, *see e.g.*, 25 U.S.C. § 1623(b), and to spend such third-party revenues “to further the general purposes of the contract,” 25 U.S.C. § 5325(m)(1). Just as in an IHS-operated program, these third-party revenues are a crucial part of a tribal contractor’s ability to provide health care.

34. Recognizing that these revenues are an integral part of the federal program operated by a tribal contractor, the Supreme Court held in *Becerra v. San Carlos Apache Tribe* that tribal contractors are entitled to receive contract support costs associated with the expenditure of third-party revenues. 602 U.S. at 243. As the Court explained in that case:

Because a self-determination contract requires a tribe to spend program income to further the programs transferred to it in the contract, [sections 5325(a)(2) and (a)(3)] require IHS to pay contract support costs when a tribe does so, just as IHS must pay contract support costs to support a tribe’s spending of the Secretarial amount.

Id. at 233; *see also* 25 U.S.C. § 1623(b) (mandating that health care programs operated by Indian tribes and tribal organizations, as with program operated directly by IHS, must be “the payer of last resort” for the services they provide).

35. On December 20, 2024, IHS issued guidance for determining the amount of contract support costs generated by the expenditure of third-party revenues. *See* Indian Health Service Guidance for Contract Support Costs on Expenditures of Third-Party Reimbursements (Dec. 20, 2024) (available at https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/2024_Letters/Enclosure1_DTLL_12202024.pdf). In the guidance, IHS stated that it “is willing and able to engage in negotiations to start estimating needed Contract Support Costs (CSC) generated by the expenditure of program income.”

36. However, in calculating the contract support costs due to ANTHC (including in FY 2014 and 2016-2022), IHS applied ANTHC’s indirect cost rate, but failed to apply the rate to the *entire* direct cost base associated with the full Federal program carried out by ANTHC under ANTHC’s Compact with IHS. Instead, IHS applied the indirect cost rate only to the portion of ANTHC’s IHS direct cost base that was funded with IHS-appropriated dollars. IHS excluded from the IHS direct cost base the portion of that base that was funded with third-party revenues that ANTHC collected and spent pursuant to its contract with IHS. It is this agency action which gives rise to this Complaint.

C. Interpretation of the Contracts.

37. In interpreting IHS's obligations, the Supreme Court has directed that "[c]ontracts made under ISDA specify that '[e]ach provision of the [ISDA] and each provision of this Contract shall be liberally construed for the benefit of the Contractor'" *Ramah*, 567 U.S. at 194 (quoting 25 U.S.C. § 5329(c) (model agreement § 1(a)(2)) (citation updated)). The Supreme Court has interpreted this language to mean that the government "must demonstrate that its reading [of the ISDA] is clearly required by the statutory language." *Id.* As noted in paragraph 11, *supra*, this language is repeated in the parties' contract. As noted in paragraph 22, *supra*, this mandatory rule of construction has been repeated in section 5321(g) of the Act.

D. Claims History for the FY 2014 Claim.

38. On September 30, 2020, ANTHC filed a timely claim for reimbursement of its unpaid contract support costs incurred in FY 2014. Ex. D.

39. ANTHC's claim letter asserted a sum certain of "\$41,709,576 plus interest." The claim letter asserted that the Secretary's duty to pay contract support costs includes costs to support the portions of a tribal organization's contracted programs funded with third-party revenues received from Medicare, Medicaid and private insurers and spent to carry out an ISDA contract "as the Court held in *Navajo Health Foundation—Sage Memorial Hospital, Inc. v. Burwell*, Case No. 1:14-cv-00958 (D.N.M. Nov. 2, 2016)." *Id.*; *see also San Carlos Apache Tribe*, 602 U.S. 243.

40. On November 30, 2020, the Secretary, acting through the IHS Deputy Director for Management Operations, denied ANTHC's FY 2014 claim. Ex. E. IHS denied that the Secretary was required by contract and by law to reimburse ANTHC's indirect costs associated with the expenditure of third-party revenues spent to carry out the Federal program under contract.

**COUNT I: BREACH OF CONTRACT FOR UNDERPAYMENT OF
INDIRECT CONTRACT SUPPORT COSTS IN FY 2014 ASSOCIATED WITH
THE ENTIRE FEDERAL PROGRAM UNDER CONTRACT, INCLUDING THE
PORTION OF THE FEDERAL PROGRAM SUPPORTED WITH THIRD-PARTY
REVENUES**

41. ANTHC incorporates all previous allegations of fact and law into this Cause of Action.

42. When ANTHC took over operation of IHS's Federal programs, controlling law authorized ANTHC to continue to bill, collect, and spend third-party revenues, just as IHS had done prior to ANTHC's operation of these Federal programs. 25 U.S.C. §§ 1621e(a), 1621f(a)(1), 1641(c)(1)(B), 1641(d), 5325(m); 42 U.S.C. §§ 1395qq, 1396j, 1397aa–1397mm. The billing, collection and expenditure of third-party revenues to carry out the contract was expressly contemplated by the parties' contract.

43. ANTHC was entitled to have contract support costs added to support all the IHS Federal programs ANTHC operated in FY 2014, regardless of the extent to which those Federal programs were funded by appropriated dollars or third-party revenue dollars.

44. IHS failed to calculate and pay ANTHC's administrative costs of operating the third-party revenue-funded portion of its IHS Compact, even though generating those

revenues and spending them on health care was expressly contemplated by the Compact and was an integral and essential part of the Federal program described in the Compact, *see* Compact, art. III, § 7; FY 2014 FA § 1.1.3, and even though the expenditure of those revenues pursuant to the contract caused ANTHC to incur substantial administrative costs.

45. IHS's failure to pay ANTHC indirect contract support costs associated with ANTHC's third-party revenue-supported health care operations—that is, the failure to include these third-party revenues in the IHS direct program base against which ANTHC's indirect cost rate was applied—resulted in significant under-reimbursements to ANTHC of indirect contract support costs. It was also contrary to law.

46. As a result of IHS's breach of contract, ANTHC was required to divert significant resources to cover the indirect costs associated with the expenditure of third-party revenues. The diverted funds were thus no longer available for other crucial health care purposes under the contract, such as services and facilities to meet the sub-acute skilled nursing and care needs, emergency services expansion and facility upgrades to avoid excessively long wait times and patients being treated in the hallways, patient housing, and other statewide health care needs. The combined impact of these funding deficiencies has harmed patient care, decreased patient and employee satisfaction and caused ANTHC's quality scores to lag behind its peers and market standards.

47. General contract principles control the calculation of damages in government contract litigation. This is so because “[w]hen the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to

contracts between private individuals.” *United States v. Winstar Corp.*, 518 U.S. 839, 895 (1996) (quoting *Lynch v. United States*, 292 U.S. 571, 579 (1934)); *see also Mobil Oil Expl. & Producing Se., Inc. v. United States*, 530 U.S. 604, 607-08 (2000) (quoting *Winstar*, 518 U.S. at 895, and relying on the Restatement (Second) of Contracts); *Franconia Assocs. v. United States*, 536 U.S. 129, 141 (2002) (quoting *Mobil Oil*, 530 U.S. at 607, and applying principles of general contract law).

48. General contract law on the issue of damages is clear that a contractor is entitled to damages which will protect “his ‘expectation interest,’ which is his interest in having the benefit of his bargain *by being put in as good a position as he would have been in had the contract been performed . . .*” Restatement § 344(a) (emphasis added).

49. ANTHC incurred no less than \$41,709,576 in indirect contract support costs associated with the expenditure of third-party revenue that was generated and spent pursuant to the IHS contract. *See* Ex. D at 5. The Secretary admits that IHS did not pay any indirect costs associated with these expenditures. In failing to pay ANTHC this amount, the Secretary breached the Secretary’s contract with ANTHC.

**COUNT II: BREACH OF STATUTORY RIGHT FOR UNDERPAYMENT OF
INDIRECT CONTRACT SUPPORT COSTS IN FY 2014 ASSOCIATED WITH
THE ENTIRE FEDERAL PROGRAM UNDER CONTRACT, INCLUDING THE
PORTION OF THE FEDERAL PROGRAM SUPPORTED WITH THIRD-PARTY
REVENUES**

50. ANTHC incorporates all previous allegations of fact and law into this Cause of Action.

51. The ISDA creates a right of action for money damages to remedy the Secretary's breach of his obligations under the ISDA. 25 U.S.C. § 5331.

52. Under 25 U.S.C. §§ 5325(a)(2)-(3), the Secretary in FY 2014 had a statutory duty to reimburse ANTHC's full indirect contract support costs.

53. The Secretary failed to pay ANTHC \$41,709,576 in indirect contract support costs due in FY 2014.

54. In order to remedy the Secretary's breach of his statutory obligations, ANTHC is entitled to damages of no less than \$41,709,576, plus applicable interest and attorneys' fees and costs, all as specifically prayed below.

**COUNT III: BREACH OF CONTRACT FOR UNDERPAYMENT OF
INDIRECT CONTRACT SUPPORT COSTS IN FY2020 ASSOCIATED WITH
THE ENTIRE FEDERAL PROGRAM UNDER CONTRACT, INCLUDING THE
PORTION OF THE FEDERAL PROGRAM SUPPORTED WITH THIRD-PARTY
REVENUES**

55. ANTHC incorporates all previous allegations of fact and law into this Cause of Action.

56. By letter dated September 16, 2022, IHS asserted a Contract Disputes Act claim against ANTHC, asserting IHS had overpaid contract support costs to ANTHC in the amount of \$2,473,364. Ex. G ("IHS 2020 Claim").

57. The ISDA prohibits the Secretary from disallowing any FY 2020 costs incurred by ANTHC more than 365 days after the Secretary received ANTHC's FY 2020 audit. *See* 25 U.S.C. § 5325(f). The IHS 2020 Claim may not have been timely as it disallowed costs and was filed on September 16, 2022, which is 367 days after ANTHC

initiated the 2020 audit submission process. On information and belief, the IHS 2020 Claim was untimely and is therefore barred.

58. The IHS 2020 Claim was not based upon a final indirect cost rate for FY 2020, but only a provisional indirect cost rate. Further, the IHS 2020 Claim applied the indirect cost rate only to what IHS alleged to be ANTHC's expenditure of IHS appropriated funds paid to ANTHC pursuant to ANTHC's contract with IHS. The IHS 2020 Claim does not apply the indirect cost rate to ANTHC's expenditure of third-party revenues from Medicare, Medicaid, and private insurance, earned under the contract between the parties and spent under and to carry out the contract between the parties. Accordingly, the IHS 2020 Claim fails to compute ANTHC's indirect contract support cost requirement on the entire "Federal program," contrary to 25 U.S.C. § 5325(a)(3)(A)(ii) of the ISDA.

59. By letter dated March 31, 2023, ANTHC presented a Contract Disputes Act claim to IHS. Ex. H ("ANTHC 2020 Claim"). The ANTHC 2020 Claim asserts a claim against IHS for the underpayment of contract support costs in the amount of \$94,646,887, plus interest. The ANTHC claim applies the same rate IHS used in the IHS 2020 Claim but applies that rate to the entire Federal program covered by the parties' contract, consistent with the statutory mandate that IHS must reimburse ANTHC for "any overhead expense incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract." 25 U.S.C. § 5325(a)(3)(A)(ii). The ANTHC 2020 claim includes an alleged underpayment of \$8,764,254 in contract support costs associated with ANTHC programs funded strictly

with IHS appropriated funds (directly contrary to the IHS 2020 Claim asserting an overpayment with respect to the expenditure of those funds).

60. The IHS 2020 Claim, together with IHS's litigating position in *Swinomish*, *San Carlos*, *Northern Arapaho*, and *Sage*, make plain that IHS contests its liability to reimburse any contract support costs associated with a tribe's or tribal organization's expenditure of third-party revenues, even though IHS has not expressly denied the ANTHC 2020 Claim. ANTHC therefore deems IHS to have denied the ANTHC 2020 Claim and by this Complaint appeals that denial to this Court pursuant to the CDA and 25 U.S.C. 5331(a) and (d) of the ISDA.

61. Consistent with the same authorities identified in Count I, *supra*, ANTHC incurred costs of no less than \$94,646,887 in excess of the amounts IHS paid ANTHC in connection with carrying out the FY 2020 contract, a portion of which is associated with the expenditure of IHS-appropriated funds and a portion of which is associated with the expenditure of third-party revenue that was generated and spent pursuant to that contract. In failing to pay ANTHC this full amount, the Secretary breached the Secretary's FY 2020 contract with ANTHC.

**COUNT IV: BREACH OF STATUTORY RIGHT FOR UNDERPAYMENT OF
INDIRECT CONTRACT SUPPORT COSTS IN FY 2020 ASSOCIATED WITH
THE ENTIRE FEDERAL PROGRAM UNDER CONTRACT, INCLUDING THE
PORTION OF THE FEDERAL PROGRAM SUPPORTED WITH THIRD-PARTY
REVENUES**

62. ANTHC incorporates all previous allegations of fact and law into this Cause of Action.

63. The ISDA creates a right of action for money damages to remedy the Secretary's breach of his obligations under the ISDA. 25 U.S.C. § 5331.

64. Under 25 U.S.C. §§ 5325(a)(2)-(3), the Secretary in FY 2020 had a statutory duty to reimburse ANTHC's full indirect contract support costs.

65. The Secretary failed to pay ANTHC \$94,646,887 in indirect contract support costs due in FY 2020.

66. In order to remedy the Secretary's breach of his statutory obligations, ANTHC is entitled to damages of no less than \$94,646,887, plus applicable interest and attorneys' fees and costs, all as specifically prayed below.

**COUNT V: COUNTERCLAIM AND APPEAL OF IHS SEPTEMBER 2022
CLAIM FOR OVERPAYMENT OF INDIRECT CONTRACT SUPPORT COSTS
IN FY 2020 ASSOCIATED WITH THE PORTION OF THE FEDERAL
PROGRAM SUPPORTED WITH IHS-APPROPRIATED FUNDS**

67. ANTHC incorporates all previous allegations of fact and law into this Cause of Action.

68. The ISDA and CDA create a right to appeal a claim from the agency contracting officer in the appropriate United States District Court within twelve (12) months from the date the claim is received. 25 U.S.C. § 5331(d); 41 U.S.C. § 7103.

69. Under 25 U.S.C. §§ 5325(a)(2)-(3), the Secretary in FY 2020 had a statutory duty to reimburse ANTHC's full indirect contract support costs.

70. On information and belief, the IHS 2020 Claim was untimely.

71. No overpayment of contract support costs occurred in FY 2020, and the IHS 2020 Claim must therefore be denied.

72. Even under the Secretary's preferred methodology, where the Secretary pays for indirect contract support costs generated only by the portion of Federal program supported by appropriated funds, the Secretary failed to pay ANTHC \$8,764,254 in indirect contract support costs due in FY 2020. *See* ANTHC 2020 Claim. Thus, the Secretary's calculations alleging an overpayment of \$2,473,364 in indirect contract support costs are invalid and must be denied.

**COUNT VI: BREACH OF CONTRACT FOR UNDERPAYMENT OF
INDIRECT CONTRACT SUPPORT COSTS IN FY 2016 THROUGH 2019 AND
2021 ASSOCIATED WITH THE ENTIRE FEDERAL PROGRAM UNDER
CONTRACT, INCLUDING THE PORTION OF THE FEDERAL PROGRAM
SUPPORTED WITH THIRD-PARTY REVENUES**

73. ANTHC incorporates all previous allegations of fact and law into this Cause of Action.

74. By letter dated September 30, 2022, ANTHC presented a Contract Disputes Act claim to IHS for FY 2016. Ex. I ("ANTHC 2016 Claim"). The ANTHC 2016 Claim asserts a claim against IHS for the underpayment of contract support costs in the amount of \$44,679,557, plus interest.

75. By letters dated March 31, 2023, ANTHC presented Contract Disputes Act claims to IHS for FY 2017 through 2019 and 2021. Ex. J ("ANTHC 2017-2019 and 2021 Claims"). The ANTHC 2017-2019 and 2021 Claims assert claims against IHS for the underpayment of contract support costs in the total amount of \$345,886,390, plus interest.

76. IHS denied the claims described in paragraphs 75 and 76 due to its belief that the ISDA does not obligate the agency to pay contract support costs on the third-party

revenue-funded portion of the programs under contract. IHS raised a number of other defenses, none of which provide a lawful basis to deny ANTHC's claims.

77. The fact that IHS's FYs 2016 through 2018 appropriations may have been cancelled by the time of its denials and are therefore unavailable to use to pay ANTHC's claims does not mean that ANTHC's claim was lawfully denied. In the event of a judicial decision sustaining ANTHC's breach of contract claims in this matter, the federal Judgment Fund must be used to pay ANTHC the resulting judgment. 31 U.S.C. § 1304; *see also* U.S. General Accounting Office, Principles of Federal Appropriations Law, 14-31, 45 (3d ed. 2008), <https://www.gao.gov/assets/2019-11/203470.pdf>; *Ramah*, 567 U.S. at 198 ("Congress expressly provided in ISDA that tribal contractors were entitled to sue for 'money damages' under the Contract Disputes Act upon the Government's failure to pay, 25 U.S.C. §§ [5331](a), (d), and judgments against the Government under that Act are payable from the Judgment Fund, 41 U.S.C. § 7108(a)."); *cf. Cherokee Nation*, 543 U.S. at 642 (explaining that a tribal contractor is "free to pursue appropriate legal remedies arising because the Government broke its contractual promise" when an agency's appropriated funds are otherwise committed).

78. Consistent with the same authorities identified in Count I, *supra*, ANTHC incurred costs of no less than \$390,565,947 in excess of the amounts IHS paid ANTHC in connection with carrying out the FY 2016 through 2019 and 2021 contracts, a portion of which is associated with the expenditure of IHS-appropriated funds and a portion of which is associated with the expenditure of third-party revenue that was generated and spent

pursuant to those contracts. In failing to pay ANTHC this full amount, the Secretary breached the Secretary's FY 2016 through 2019 and FY 2021 contracts with ANTHC.

**COUNT VII: BREACH OF STATUTORY RIGHT FOR UNDERPAYMENT
OF INDIRECT CONTRACT SUPPORT COSTS IN FY 2016 THROUGH 2019
AND 2021 ASSOCIATED WITH THE ENTIRE FEDERAL PROGRAM UNDER
CONTRACT, INCLUDING THE PORTION OF THE FEDERAL PROGRAM
SUPPORTED WITH THIRD-PARTY REVENUES**

79. ANTHC incorporates all previous allegations of fact and law into this Cause of Action.

80. The ISDA creates a right of action for money damages to remedy the Secretary's breach of his obligations under the ISDA. 25 U.S.C. § 5331.

81. Under 25 U.S.C. §§ 5325(a)(2)-(3), the Secretary in FY 2016 through 2019 and FY 2021 had a statutory duty to reimburse ANTHC's full indirect contract support costs, including those costs associated with spending third-party revenues in support of the contract. *See San Carlos Apache Tribe*, 144 S. Ct. at 1445.

82. The Secretary failed to pay ANTHC \$317,801,555 in indirect contract support costs due in FY 2016 through 2019, and \$72,764,392 in indirect contract support costs due in FY 2021, for a total of \$390,565,947 due in indirect contract support costs for these five fiscal years.

83. Due to the Secretary's breach of his statutory obligations, ANTHC was required to divert resources to cover the indirect costs associated with the expenditure of its third-party revenues. These funds were thus no longer available for other crucial health care purposes under the contract.

84. In order to remedy the Secretary's breach of his statutory obligations, ANTHC is entitled to damages of no less than \$390,565,947, plus applicable interest and attorneys' fees and costs, all as specifically prayed below.

**COUNT VIII: BREACH OF CONTRACT FOR UNDERPAYMENT OF
INDIRECT CONTRACT SUPPORT COSTS IN FY2022 ASSOCIATED WITH
THE ENTIRE FEDERAL PROGRAM UNDER CONTRACT, INCLUDING THE
PORTION OF THE FEDERAL PROGRAM SUPPORTED WITH THIRD-PARTY
REVENUES**

85. ANTHC incorporates all previous allegations of fact and law into this Cause of Action.

86. By letter dated May 10, 2024, IHS asserted a Contract Disputes Act claim against ANTHC, asserting IHS had overpaid contract support costs to ANTHC in the amount of \$1,184,943 for FY 2022. Ex. K ("IHS 2022 Claim").

87. The IHS 2022 Claim applied the indirect cost rate only to what IHS alleged to be ANTHC's expenditure of IHS appropriated funds paid to ANTHC pursuant to ANTHC's contract with IHS. The IHS 2022 Claim does not apply the indirect cost rate to ANTHC's expenditure of third-party revenues from Medicare, Medicaid, and private insurance earned under the contract between the parties and spent under and to carry out the contract between the parties. Accordingly, the IHS 2022 Claim fails to compute ANTHC's indirect contract support cost requirement on the entire "Federal program," contrary to 25 U.S.C. § 5325(a)(3)(A)(ii) of the ISDA.

88. By letter dated December 2, 2024, ANTHC presented a Contract Disputes Act claim to IHS for FY 2022. Ex. L ("ANTHC 2022 Claim"). The ANTHC 2022 Claim

asserts a claim against IHS for the underpayment of contract support costs in the amount of \$107,886,473, plus interest. The ANTHC claim applies the indirect rate to the entire Federal program covered by the parties' contract, consistent with the statutory mandate that IHS must reimburse ANTHC for "any overhead expense incurred by the tribal contractor in connection with the operation of the Federal program, function, service, or activity pursuant to the contract." 25 U.S.C. § 5325(a)(3)(A)(ii). The ANTHC 2022 claim includes an alleged underpayment of \$17,601,429 in contract support costs associated with ANTHC programs funded strictly with IHS-appropriated funds (directly contrary to the IHS 2022 Claim asserting an overpayment with respect to the expenditure of those funds).

89. The IHS 2022 Claim, and the fact that IHS has not withdrawn that claim since the June 2024 Supreme Court decision in the *San Carlos* case, make plain that IHS contests its liability to reimburse any contract support costs associated ANTHC's expenditure of third-party revenues, even though IHS has not expressly denied the ANTHC 2022 Claim. ANTHC therefore deems IHS to have denied the ANTHC 2022 Claim and by this Complaint appeals that denial to this Court pursuant to the CDA and 25 U.S.C. 5331(a) and (d) of the ISDA.

90. Consistent with the same authorities identified in Count I, *supra*, ANTHC incurred costs of no less than \$107,886,473 in excess of the amounts IHS paid ANTHC in connection with carrying out the FY 2022 contract, a portion of which is associated with the expenditure of IHS-appropriated funds and a portion of which is associated with the expenditure of third-party revenue that was generated and spent pursuant to that contract.

In failing to pay ANTHC this full amount, the Secretary breached the Secretary's FY 2022 contract with ANTHC.

COUNT IX: BREACH OF STATUTORY RIGHT FOR UNDERPAYMENT OF INDIRECT CONTRACT SUPPORT COSTS IN FY 2022 ASSOCIATED WITH THE ENTIRE FEDERAL PROGRAM UNDER CONTRACT, INCLUDING THE PORTION OF THE FEDERAL PROGRAM SUPPORTED WITH THIRD-PARTY REVENUES

91. ANTHC incorporates all previous allegations of fact and law into this Cause of Action.

92. The ISDA creates a right of action for money damages to remedy the Secretary's breach of his obligations under the ISDA. 25 U.S.C. § 5331.

93. Under 25 U.S.C. §§ 5325(a)(2)-(3), the Secretary in FY 2022 had a statutory duty to reimburse ANTHC's full indirect contract support costs.

94. The Secretary failed to pay ANTHC \$107,886,473 in indirect contract support costs due in FY 2022.

95. In order to remedy the Secretary's breach of his statutory obligations, ANTHC is entitled to damages of no less than \$107,886,473, plus applicable interest and attorneys' fees and costs, all as specifically prayed below.

COUNT X: COUNTERCLAIM AND APPEAL OF IHS MAY 2024 CLAIM FOR OVERPAYMENT OF INDIRECT CONTRACT SUPPORT COSTS IN FY 2022 ASSOCIATED WITH THE PORTION OF THE FEDERAL PROGRAM SUPPORTED WITH IHS-APPROPRIATED FUNDS

96. ANTHC incorporates all previous allegations of fact and law into this Cause of Action.

97. The ISDA and CDA create a right to appeal a claim from the agency contracting officer in the appropriate United States District Court within twelve (12) months from the date the claim is received. 25 U.S.C. § 5331(d); 41 U.S.C. § 7103.

98. Under 25 U.S.C. §§ 5325(a)(2)-(3), the Secretary in FY 2022 had a statutory duty to reimburse ANTHC's full indirect contract support costs.

99. No overpayment of contract support costs occurred in FY 2022, and the IHS 2022 Claim must therefore be denied.

100. Even under the Secretary's preferred methodology, where the Secretary pays for indirect contract support costs generated only by the portion of Federal program supported by appropriated funds, the Secretary failed to pay ANTHC \$17,601,429 in indirect contract support costs due in FY 2022. *See* ANTHC 2022 Claim. Thus, the Secretary's calculations alleging an overpayment of \$1,184,943 in indirect contract support costs are invalid and must be denied.

PRAYER FOR RELIEF

WHEREFORE, ANTHC prays that this Court grant the following relief:

- (a) A declaratory judgment that in FY 2014 and FY 2016 through 2022 the Secretary acted in violation of the ISDA by failing to pay ANTHC the full amount of contract support costs that ANTHC was due under its contract with the Secretary;

- (b) A declaratory judgment that in FY 2014 and FY 2016 through 2022 the Secretary breached his Contract with ANTHC by failing to pay ANTHC's full contract support cost requirement;
- (c) A money judgment for \$41,709,576 in FY 2014 contract damages, \$44,679,557 in FY 2016 contract damages, \$72,417,747 in FY 2017 contract damages, \$95,547,487 in FY 2018 contract damages, \$105,156,764 in FY 2019 contract damages, \$94,646,887 in FY 2020 contract damages, \$72,764,392 in FY 2021 contract damages, and \$107,886,473 for FY 2022 contract damages;
- (d) A declaratory judgment that Defendants' September 16, 2022 claim for overpayment of contract support costs is denied and dismissed in its entirety with prejudice;
- (e) A declaratory judgment that Defendants' May 10, 2024 claim for overpayment of contract support costs is denied and dismissed in its entirety with prejudice;
- (f) Interest for one year from the date each unpaid amount comprising the \$41,709,576, \$44,679,557, \$72,417,747, \$95,547,487, \$105,156,764, \$94,646,887, \$72,764,392, and \$107,886,473 was due, as provided for under the Prompt Payment Act, 31 U.S.C. §§ 3901-3907;

- (g) Interest under the Contract Disputes Act, 41 U.S.C. §§ 7101-7109, from the date each claim was filed to the date of final payment made on each claim pursuant to a judgment of this Court;
- (h) Costs and attorneys' fees incurred in pursuing this claim, as provided for under the Equal Access to Justice Act, 5 U.S.C. § 504; 28 U.S.C. § 2412; the ISDA, 25 U.S.C. § 5331(c), and other applicable law; and
- (i) Such other monetary, declaratory, and equitable relief as this Court may find to be just.

Dated this 20th day of March 2025.

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CERTIFICATE OF SERVICE

I certify that on March 20, 2025, a copy of
the foregoing document was served via ECF
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