

Downstream Development Authority of the Quapaw Tribe of Oklahoma  
Supplement to Minutes dated 4/14/16.  
Email Poll

|            |                            |         |
|------------|----------------------------|---------|
| Roll Call: | John Berrey, Chairman      | Present |
|            | Larry Ramsey, Secretary    | Present |
|            | Ranny McWatters, Treasurer | Present |
|            | Marilyn Rogers, Member     | Present |
|            | Tamara Reeves, Member      | Present |

An email poll was conducted on Monday April 25, 2016.

All,

Attached is short resolution, prepared by Steve Ward, authorizing the health care consulting and business associate agreements with AllCare Pharmacy. Copies of the agreements are also attached.

Vote:

|                |     |                 |     |
|----------------|-----|-----------------|-----|
| John Berrey    | Yes | Ranny McWatters | Yes |
| Marilyn Rogers | Yes | Larry Ramsey    | Yes |
| Tamara Reeves  | Yes |                 |     |

5 yes, 0 no, 0 abstaining, 0 absent

Motion Carries.



## RESOLUTION NO. 042516-A

### A RESOLUTION AUTHORIZING CERTAIN CONSULTING AGREEMENTS RELATING TO DOWNSTREAM DEVELOPMENT AUTHORITY BENEFITS PLANS

***WHEREAS**, the Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah) (the "Authority"), is an unincorporated entity wholly owned by the Quapaw Tribe of Oklahoma (O-Gah-Pah) (the "Tribe"), a federally recognized Indian nation; and*

***WHEREAS**, the Authority was created under the laws of the Tribe and was authorized to develop, construct, manage, and operate the Downstream Casino Resort (the "Resort") and to engage in gaming pursuant to Tribal, federal, and state law on the Indian lands of the Tribe within the original Quapaw Reservation, as established as a homeland for the Quapaw Nation by the Treaty of May 13, 1833, Quapaw Code Title 17, § 101 et seq. (the "Charter"); and*

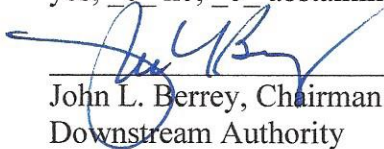
***WHEREAS**, the Authority is expressly authorized to exercise its powers in the best interest of the Tribe, and to carry out its duties and responsibilities under the Charter of the Authority; and*

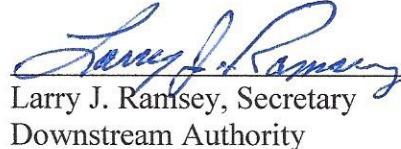
***WHEREAS**, the Authority has determined it is appropriate to seek the advice of professional consultants, including AllCare Pharmacy (hereinafter "Consultant"), concerning the management and implementation of various benefits plans of the Authority relating to health care, and to enter into agreements relating to such consulting services.*

**NOW, THEREFORE, BE IT RESOLVED THAT** the Authority hereby approves the Consulting Agreement to be entered into between the Authority, as sponsor of the Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah), d/b/a Downstream Casino Resort Plan, and the Consultant, along with other agreements, including but not limited to a Business Associate agreement, necessary to comply with applicable laws, and further authorizes the Chairman or any other officer of the Board of Members of the Authority to execute and deliver such agreements to the Consultant.

### CERTIFICATION

The foregoing resolution of the Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah) was duly adopted through an electronic/telephonic poll of the Board of Members of the Authority conducted on April 25, 2016, with a vote reflecting 5 yes, 0 no, 0 abstaining, and 0 absent.

  
John L. Berrey, Chairman  
Downstream Authority

  
Larry J. Ramsey, Secretary  
Downstream Authority

## CONSULTING AGREEMENT

This Consulting Agreement (the “**Agreement**”) is made effective as of April \_\_\_\_, 2016, by and between Plan Sponsor of the Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah), dba Downstream Casino Resort Plan (“**Plan**”) and AllCare Pharmacy (“**Consultant**”).

### RECITALS

**WHEREAS**, Consultant has a background in pharmacy benefit management (“**PBM**”) services and is willing to provide consulting services to Plan based on this background; and

**WHEREAS**, Plan desires to have services provided by Consultant.

**NOW THEREFORE**, the parties agree as follows:

1. **SERVICES.** Beginning on \_\_\_\_\_, 2016, Consultant will provide certain consulting, research and analysis services to Plan pertaining to its pharmacy benefits (collectively, the “**Services**”).
2. **APPROVAL OF PROJECTS AND APPROVED SERVICES.** Consultant and Plan recognize that Consultant's Services will include working on various projects for Plan (“**Projects**”). Consultant shall provide Services only pursuant to Projects mutually determined and agreed to by Plan and Consultant. In providing the Services, Consultant shall seek the assistance of MedOne Healthcare Systems, a pharmacy benefit management company (“**MedOne**”), as a subcontractor to Consultant. MedOne has executed a business associate agreement with Consultant and Consultant will ensure that MedOne is subject to the same confidentiality obligations as Consultant. For any Project requiring payment of fees or expenses, Consultant shall provide Plan with a proposed budget for the Services required to complete the Project. Only if the Quapaw Tribe of Oklahoma’s Business Committee has approved Consultant’s proposed budget for the Project in writing (“**Approved Services**”) will Plan be responsible for payment. Consultant agrees to complete all approved Projects within the approved budget.
3. **TERM/TERMINATION.** This Agreement shall be effective for a period of one (1) year and may be renewed for successive terms of the same duration if agreed to by Plan in writing. Plan may terminate this Agreement at any time for any reason upon 30 days prior written notice to Consultant.
4. **RELATIONSHIP OF PARTIES.** The parties agree that Consultant is an independent contractor with respect to Plan, and not an employee of Plan. Plan will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of Consultant.
5. **DISCLOSURE.** Consultant is required to disclose to Plan any outside activities or interests, including ownership or participation in the development of prior inventions, that conflict or may conflict with the best interests of Plan. Prompt disclosure is required under this paragraph of any activity or interest related, directly or indirectly, to any activity that Consultant

may be involved with on behalf of Plan or that conflicts with services provided to other health care providers.

**6. HIPAA.** The parties agree that Plan is a Covered Entity and that Consultant is a Business Associate of Plan under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (“**HIPAA**”), as amended, to the extent such laws are applicable to federally recognized tribal governments acting within their jurisdiction. As required by HIPAA, the parties have entered into a separate Business Associate Agreement of even date with this Agreement. The parties acknowledge that Consultant may create, maintain or receive Protected Health Information on behalf of Plan while providing Services under this Agreement. “**Protected Health Information**” shall have the same meaning as provided in 45 C.F.R. § 160.103 and includes information, in any form, that is created, maintained, or received by or on behalf of Plan that relates in any way to Plan’s prospective, past, present or future patients, and from which the patient could reasonably be identified, including, without limitation, photographic images of patients. HIPAA prohibits the use or disclosure of Protected Health Information in a communication made to encourage the recipient to purchase or use a product or service (“**Marketing**”) without the prior written authorization of the patient to whom the information pertains. Consultant agrees not to use or disclose any Protected Health Information created or maintained for or received by or on behalf of Plan under this Agreement for Marketing or in any manner not provided in the Business Associate Agreement without the prior written approval of Plan. Plan will approve such use or disclosure only if the patient to whom the Protected Health Information pertains authorizes such use or disclosure in writing.

**7. EMPLOYEES.** Consultant's employees, if any, who perform Services for Plan under this Agreement shall also be bound by the provisions of this Agreement. At the request of Plan, Consultant shall provide adequate evidence that such persons are Consultant's employees.

**8. PROPERTY OF PLAN AND RETURN OF RECORDS.** The parties agree that Plan is the sole owner of any Work Product of Consultant created, maintained or received by Consultant pursuant to this Agreement regardless of whether the Work Product is used by Consultant to perform Services or to complete any Project under this Agreement. “**Work Product**” shall mean all photographs, records, notes, data, memoranda, models, and equipment of any nature related to the Services or created, maintained or received by Consultant pursuant to this Agreement. Upon termination of this Agreement, Consultant shall deliver to Plan all Work Product in Consultant's possession or under Consultant's control.

**9. PROPRIETARY INFORMATION.** In the course of the performance of this Agreement, Plan may disclose to Consultant certain proprietary, confidential or other non-public information (collectively, the “**Information**”) relating to its business and the business of the Quapaw Tribe of Oklahoma. Except as set forth in this Agreement, neither Consultant or its representatives or advisors will: (i) reveal or make known the Information to any person, firm, corporation or entity, other than its representatives and advisors; (ii) utilize the Information in its own business; or (iii) make any other usage of any Information other than in connection with Services rendered pursuant to this Agreement. Consultant shall be liable for any breach of the provisions of this paragraph by its representatives or advisors. Notwithstanding the foregoing, Consultant may disclose any Information received from Plan to any governmental or regulatory authority in connection with obtaining approval for the provision of the Services or as otherwise

may be required by applicable law. Consultant's obligations with respect to any item of Information disclosed to it will terminate if that item of Information becomes disclosed in published literature or otherwise becomes generally available to the public unless the availability to the public shall have resulted, directly or indirectly, from any act, omission, or fault of that party with respect to that item of Information. Further, this paragraph will not apply to any item of Information which at the time of disclosure was already generally available to the public or which at the time of disclosure was already in the possession of the party intending to utilize the item of Information and was not acquired by that party, directly or indirectly, from the disclosing party as protected Information under this Agreement or a confidentiality agreement. Following termination of this Agreement, upon a party's request, Consultant shall return all Information of Plan and the Quapaw Tribe of Oklahoma to Plan, without keeping copies in any form or medium.

**10. NOTICES.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

Plan: Downstream Casino Resort Plan  
P.O. Box 765  
Quapaw, Oklahoma 74363-0765  
Attention: John L. Berrey, Chairman  
Downstream Development Authority

Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Such address may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

**11. ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

**12. AMENDMENT.** This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

**13. SEVERABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**14. WAIVER OF CONTRACTUAL RIGHT.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

**15. APPLICABLE LAW.** This Agreement shall be governed by the laws of the Quapaw Tribe of Oklahoma, without reference to principles of choice of law.

**16. INTERRUPTION OF SERVICE.** Either party shall be excused from any delay or failure in performance required under this Agreement if caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of God, acts of war, fire, insurrection, laws, proclamations, edicts, ordinances or regulations, strikes, lock-outs or other serious labor disputes, riots, earthquakes, floods, explosions or other acts of nature. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption. When such events have abated, the parties' respective obligations under this Agreement shall resume. Except as otherwise agreed by the parties in writing, in the event the interruption of the excused party's obligations continues for a period in excess of thirty (30) days, either party shall have the right to terminate this Agreement upon ten (10) days' prior written notice to the other party.

**17. ASSIGNMENT.** Consultant agrees that it will not assign, sell, transfer, delegate or otherwise dispose of any rights or obligations under this Agreement. Any purported assignment, transfer, or delegation shall be null and void. Nothing in this Agreement shall prevent the consolidation of Plan with, or its merger into, any other corporation, or the sale by Plan of all or substantially all of its properties or assets, or the assignment by Plan of this Agreement and the performance of its obligations under this Agreement to any successor in interest or any Affiliated Company. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors, and permitted assigns, and shall not benefit any person or entity other than those enumerated above.

**IN WITNESS WHEREOF,** the parties have executed this Agreement effective as of the date first above written.

#### **DOWNSTREAM CASINO RESORT PLAN**

By: \_\_\_\_\_  
Name: John L. Berrey  
Title: Chairman, Downstream Development Authority

#### **ALLCARE PHARMACY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “**Agreement**”) is made and entered into effective as of \_\_\_\_\_, 2016, by and between AllCare Pharmacy (the “**Business Associate**”) and Plan Sponsor of the Downstream Development Authority of the Quapaw Tribe of Oklahoma (O-Gah-Pah), dba Downstream Casino Resort Plan (the “**Plan**” or “**Covered Entity**”).

### RECITALS

**WHEREAS**, the Covered Entity and Business Associate have entered into one or more agreements providing, among other things, that Business Associate will perform certain services on behalf of the Covered Entity (collectively, the “**Services Agreement**”); and

**WHEREAS**, in order to comply with the Administrative Simplification provisions of the regulations adopted under Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), as set forth in 45 CFR Parts 160, 162 and 164 and as amended by the HITECH Act portion of the American Recovery and Reinvestment Act of 2009, and to the extent such laws applicable to federally recognized tribal governments acting within their jurisdiction, the parties desire to enter into this Agreement in order to comply with such provisions (the “**HIPAA Rules**”) (45 CFR Parts 160 and 164 being referred to herein as the “**Privacy Rule**”).

#### 1. Definitions

Words and phrases used in this Agreement, including but not limited to capitalized words and phrases, which are not otherwise defined herein shall have the meanings assigned thereto in the HIPAA Rules.

#### 2. Obligations and Activities of Business Associate

- a. Business Associate agrees not to use or disclose protected health information other than as permitted or required by this Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this Agreement.
- c. Business Associate agrees to report to Covered Entity any use or disclosure of protected health information not provided for by this Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 C.F.R. § 164.410 (described in Section 6. Below) and any security incident of which it becomes aware.
- d. In accordance with 45 C.F.R. §§ 502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractor of Business Associate that creates, receives, maintains or transmits protected health information on behalf of Business Associate agrees to the same

restrictions, conditions and requirements that apply through this Agreement or otherwise to Business Associate with respect to such information.

- e. Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner reasonably requested by Covered Entity, to protected health information in a designated record set, to Covered Entity in order for Covered Entity to meet the requirements under 45 C.F.R. § 164.524.
- f. To the extent a request is made by the Covered Entity for Business Associate to respond to any request by the Secretary or any other Federal or State authority, Covered Entity shall be responsible for paying for all services related to Business Associate responding to such inquiry and all reasonable costs associated with such response.
- g. Business Associate agrees to document such disclosures of protected health information and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with 45 C.F.R. § 164.528.
- h. Business Associate agrees to provide to Covered Entity in a time and manner as may be reasonably requested by Covered Entity, information collected in accordance with Section 2(g) above, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with 45 C.F.R. § 164.528.

### **3. Permitted Use and Disclosure by Business Associate**

- a. Except as otherwise limited in this Agreement, Business Associate may use or disclose protected health information to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Services Agreement.
- b. Except as otherwise limited in this Agreement, Business Associate may use protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- c. Except as otherwise limited in this Agreement, Business Associate may disclose protected health information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

### **4. Obligations of Covered Entity**

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent

that such limitation may affect Business Associate's use or disclosure of protected health information.

- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by individual to use or disclose protected health information, to the extent that such changes may affect Business Associate's use or disclosure of protected health information.
- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of protected health information that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.

#### **5. Permissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

#### **6. HITECH Act**

Business Associate agrees to report to the Covered Entity, in writing, within ten (10) business days of the Business Associate's discovery of any "**Breach**", as such term is defined in the HIPAA Rules, as applicable. The notification to Covered Entity of a Breach will include: (1) a description of what happened, including the date of the Breach, date of the discovery of the Breach, and affected individuals; (2) a description of the types of unsecured PHI that were involved in the Breach; (3) suggested steps affected individuals should take to protect themselves from potential harm resulting from the Breach; and (4) a brief description of what Business Associate is doing to investigate the Breach, mitigate potential harm, and to protect against future Breaches.

#### **7. Protection of Exchanged Information in Electronic Transactions**

If Business Associate conducts any standard transactions for or on behalf of the Covered Entity, Business Associate shall comply, and shall require any subcontractor or agent conducting such standard transactions to comply, with each applicable requirement of 45 C.F.R. Part 162.

#### **8. Term**

The term of this Agreement shall be effective as of the Effective Date, and shall terminate when all of the protected health information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy protected health information, protections are extended to such information, in accordance with the provisions of Section 10 below.

## **9. Termination for Cause**

Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:

- a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Services Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
- b. Immediately terminate this Agreement and the Services Agreement if Business Associate has breached a material term of this Agreement and cure is not made.

## **10. Effect of Termination**

- a. Except as provided in subsection (b) below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy any protected health information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to protected health information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the protected health information.
- b. In the event that Business Associate determines that returning or destroying the protected health information is infeasible, Business Associate shall subject the protected health information to the same safeguards as for an active engagement. Business Associate shall extend the protections of this Agreement to such protected health information and limit further uses and disclosures of such protected health information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such protected health information.

## **11. Regulatory References**

A reference in this Agreement to a section in any statute or in the HIPAA Rules means the section as in effect or as amended.

## **12. Survival**

Business Associate's obligation to protect the privacy of the protected health information created or received for or from the Plan will be continuous and survive termination, cancellation, expiration or other conclusion of the Agreement.

## **13. Interpretation and Conflicts**

Any ambiguity in this Agreement or the Services Agreement shall be resolved in favor of a meaning that permits the Plan to comply with HIPAA and the HIPAA Rules, as applicable. In the event of conflicting terms or conditions with prior agreements between the parties, this Agreement shall supersede any such previous agreement.

**15. No Third Party Beneficiary**

Nothing express or implied in this Agreement or the Services Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assignees of the parties, any rights, remedies, obligations, or liabilities whatsoever.

**16. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Quapaw Tribe of Oklahoma to the extent not preempted by HIPAA, the HIPAA Rules or other applicable Federal law.

**17. Notice**

All notices, requests, consents and other communications hereunder will be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder.

**If to the Business Associate:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

**If to Covered Entity:**

Downstream Casino Resort Plan

P.O. Box 765

Quapaw, Oklahoma 74363-0765

Attention: John L. Berrey, Chairman

Downstream Development Authority

[Signature Page Follows.]

**IN WITNESS WHEREOF**, each of the undersigned has caused this Agreement be duly executed in its name and on its behalf as of the Effective Date.

**COVERED ENTITY:**

Downstream Casino Resort Plan

By: \_\_\_\_\_

Name: John L. Berrey

Title: Chairman, Downstream Development Authority

**BUSINESS ASSOCIATE:**

AllCare Pharmacy

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_