



# Choctaw Nation JUDICIAL BRANCH

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## **Chapter 1. Preliminary Provisions.**

### **Section 1-101. Title of Chapter**

This Act shall be known as the Choctaw Nation of Oklahoma Worker’s Injury Act.

### **Section 1-102. Legislative Purpose**

This Code shall be construed so as to protect and ensure the political integrity, the economic security, and the health and welfare of the Choctaw Nation of Oklahoma.

### **Section 1-103. Jurisdiction**

The Court of General Jurisdiction of the Choctaw Nation of Oklahoma shall have jurisdiction over claims arising under this Act, provided that all administrative remedies have been exhausted.

### **Section 1-104. Effective Date**

This Act shall be in full force and effect as of August 1, 2012.

### **Section 1-105. Severability**

The provisions of this Act are severable, and if any part or provision hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Act.

### **Section 1-106. Headings and Captions**

The headings and captions herein are provided for reference and convenience only, shall not be considered part of this Act, and shall not be used in construction of this Act.

### **Section 1-107. Gender and Number**

Except where otherwise clearly indicated by context, the masculine and the neuter shall include the feminine and the neuter, the singular shall include the plural and vice versa.

## **Section 1-108. Service of Process**

Official notices and other communications regarding this Act or a claim pursuant to this Plan shall be submitted to:

Choctaw Nation of Oklahoma  
ATTN: Worker's Injury Department  
P.O. Box 1210  
Durant, OK 74702

or other address as directed by the Administrator.

## **Chapter 2. Worker's Injury System.**

### **ARTICLE 1. PURPOSE OF THE PLAN**

#### **Section 2-101. Designation**

This Plan is adopted as a part of this Act is designated the "The Choctaw Nation of Oklahoma Employee Injury Benefit Plan." This Plan supersedes and replaces any previous benefit program or plan maintained by Employer covering employment-related injuries or illnesses.

#### **Section 2-102. Purpose**

The purpose of the Plan is to provide limited medical and wage replacement benefits, as appropriate under and subject to the terms of the Plan, for Participants who sustain Compensable Injuries.

### **ARTICLE 2. DEFINITIONS**

#### **Section 2-201. Definitions**

- A.** "Administrator" means the Nation or such other person, entity or Committee as may be appointed from time to time by the Nation to supervise administration of this Plan, as provided under Section 2-601, below.
- B.** "Average Weekly Earnings" means the amount calculated in accordance with Section 2-408, below.
- C.** "Claimant" means any Participant or authorized representative of a Participant who submits a claim under the Plan.
- D.** "Code" means the Internal Revenue Code of 1986, as amended from time to time. References to any section of the Code shall include any successor provision thereto. Any reference to Code shall be for informational purposes only and shall not be construed as consent to jurisdiction or waiver sovereign rights.

**E.** **“Compensable Injury”** means accidental damage or harm to the physical structure of the body of a Participant which happens while a Participant is (i) on the Employer’s premises and actually working in the course and scope of his employment with an Employer or (ii) making a business trip authorized by an Employer. “Compensable Injury” does not include accidental bodily harm occurring to a Participant (i) while commuting between the Participants’ home and place of work or (ii) during personal deviations (an activity that is not reasonably related to an Employer’s business or not incidental to a business trip). “Compensable Injury” does not include the exacerbation of any condition or disease process of a Participant that arises on account of services performed by the Participant for the Employer. All Compensable Injuries suffered by a Participant in one accident or related series of accidents shall be considered a single Compensable Injury. Only those injuries which fall within the definition of Compensable Injury set forth herein shall result in a Participant receiving benefits under the Plan.

- i.** **“Compensable Injury”** includes any injury or Occupational Disease, causing internal or external harm to the body, which arises out of an in the course of employment if such employment was the major cause of the specific injury or illness. An injury, other than Cumulative Trauma, is a Compensable Injury only if it is caused by a specific incident and is identifiable by time, place and occurrence unless it is otherwise defined as compensable in this Act. A Compensable Injury must be established by objective medical evidence. The Participant has the burden of proof to establish by a preponderance of the evidence that an alleged injury was in fact caused by the employment. There is no presumption from the mere occurrence of an injury that the injury was in fact caused by the employment.
- ii.** **“Compensable Injury”** includes a cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death, only if, in relation to other factors contributing to the physical harm, a work-related activity is the major cause of the physical harm. Such injury shall not be deemed to be a Compensable Injury unless it is shown that the exertion of the work was extraordinary and unusual in comparison to the usual work of the employee, or alternately, that some unusual incident occurred which is found to have been the major cause of the physical harm.
- iii.** **“Compensable Injury”** includes damage to personal property which is established by objective medical evidence to be medically necessary and which replaces or improves normal physical function of the body, such as artificial dentures, artificial limbs, glass eyes, eye glasses and other prostheses which are placed in or on the body and are damaged as a result of the injury.
- iv.** **“Compensable Injury”** shall not include the ordinary, gradual deterioration or progressive degeneration caused by the aging process, unless the employment is a major cause of the deterioration or degeneration as established through objective medical evidence; nor shall it include injury incurred while engaging in or performing, or as the result of engaging in or performing, any recreation or social activities.
- v.** **“Compensable Injury”** shall not include an injury resulting directly or indirectly from idiopathic causes; any contagious or infectious disease unless it arises out of and occurs in the scope and course of employment; or death due to natural causes occurring while the worker is at work.

- vi. **“Compensable Injury”** shall not include mental injury that does not arise directly as a result of a compensable physical injury, except in the case of rape or other crime of violence which arises out of and in the course of employment.
  - vii. **“Compensable Injury”** shall not include an injury resulting directly from the willful failure of the injured employee to use a guard or protection against accident which had been furnished for use by the Employer.
- F.** **“Compensation”** means the wage replacement benefits payable to a Participant as provided for in the Plan, in accordance with Section 2-407 below.
- G.** **“Cumulative Trauma”** means damage or harm to the physical structure of Participant’s body occurring as a result of repetitious, physically traumatic activities.
- H.** **“Effective Date”** means August 1, 2012.
- I.** **“Eligibility Period”** means the period calculated in accordance with Section 2-402, below.
- J.** **“Employee”** means any individual working for the Employer who is considered to be in a legal employer-employee relationship with the Employer for federal withholding tax purposes. The term “Employee” shall not include any self-employed individual who receives from the Employer “net earnings from self employment” within the meaning of Code Section 401 (c)(2) unless such individual is also an Employee. The term “Employee” shall also not include any person who is an independent contractor, or who is covered under some other plan or arrangement that provides workers’ compensation benefits. The term “Employee” shall also not include any person providing or performing voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitative therapy, transportation, lodging or reimbursement for incidental expenses.
- K.** **“Employer”** means the Nation and any Participating Affiliates.
- L.** **“Maximum Medical Improvement”** means that condition, when a Participant has reached the full and anticipated extent of recovery from a Compensable Injury, based on objective medical evidence, certified by a Provider, and further material recovery from the Compensable Injury or improvement to the Participant’s medical condition attributable to the Compensable Injury cannot reasonably be anticipated.
- M.** **“Nation”** means The Choctaw Nation of Oklahoma.
- N.** **“Occupational Disease”** means only that disease or illness which is due to causes and conditions of or peculiar to the particular trade, occupation, process or employment in which the Participant is exposed to such disease. Occupational Disease does not include a cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death, unless as demonstrated by objective medical evidence, a work-related activity is the major cause of the physical harm.
- O.** **“Participant”** means an eligible Employee who satisfies all requirements for participation in this Plan. An Employee’s status as a Participant terminates on the earliest of: (1) the date his employment with Employer ceases; (2) the date the Plan terminates; or (3) the date the Employee ceases to be eligible for any other reason.

- P.** “**Participating Affiliate(s)**” means any subsidiary, “d/b/a” or affiliated entity or business of The Choctaw Nation of Oklahoma, that has adopted this Plan and is shown on Schedule “A,” to the Plan.
- Q.** “**Plan**” means The Choctaw Nation of Oklahoma Employee Injury Benefit Plan, as set forth in this document and as hereinafter amended.
- R.** “**Plan Year**” means the twelve (12) month period beginning on January 1<sup>st</sup> and ending on December 31<sup>st</sup> each calendar year, unless the period of time from the Effective Date until December 31 is less than twelve (12) months; in such an event, the first Plan Year shall be from the Effective Date until December 31<sup>st</sup>.
- S.** “**Provider**” means any health care provider designated or approved by Administrator to administer medical treatment, for which payment or reimbursement is authorized under this Plan. If no health care provider is specifically designated, Provider includes any licensed physician that Administrator designates as approved or authorized to administer medical treatment under this Plan. The Administrator can withhold approval of a health care provider at any time, before or after a Compensable Injury occurs, in the Employer’s sole and absolute discretion.
- T.** “**Third Party Administrator**” means a third party administrator (if any) specified in resolutions adopted by the Nation, or otherwise retained by the Nation to administer claims for benefits under this Plan.
- U.** “**Tribal Court**” means the Court of General Jurisdiction of the Choctaw Nation of Oklahoma.
- V.** “**Wage Period**” means a Participant’s wage history period calculated in accordance with Section 2-408, below.

### **ARTICLE 3. REQUIREMENTS TO PARTICIPATE IN PLAN**

#### **Section 2-301. Eligibility to Participate**

Each employee who was an Employee on the Effective Date shall be eligible to participate in this Plan as of the Effective Date. Every other individual retained to perform services for the Employer shall be eligible to participate in this Plan as of the date on which he becomes classified as an Employee and satisfies all requirements for being a Participant.

#### **Section 2-302. Cessation of Participation**

A Participant will cease to be a Participant in this Plan as of the earlier of (i) the date his employment with Employer ceases; (ii) the date the Plan terminates; or (iii) the date the Participant ceases to be eligible for any other reason.

#### **Section 2-303. Reinstatement of Former Participant**

A former Participant will become a Participant in this Plan again when he or she again satisfies all the Plan participation requirements.

### **Section 2-304. Effect of Participation**

A Participant who accepts any amount of benefits provided by this Plan, shall be deemed to have waived his or her right to sue or bring other legal action against the Nation, the Administrator, the Employer, or any co-employee of the Participant for any act or omission giving rise to the Compensable Injury for which Employee receives benefits under this Plan. The Employee's acceptance of benefits under this Plan shall be deemed to be a knowing, complete and voluntary waiver of any and all charges, claims or controversies between the Participant and the Nation, the Administrator and Employer as to the events giving rise to the Compensable Injury for which Participant receives benefits under the Plan. Acceptance of the terms of this Plan and acknowledgment that the benefits provided under this Plan constitute an Employee's sole and exclusive remedy against the Nation, the Administrator a Participating Employer or co-employee for an alleged Compensable Injury is a condition of employment for an Employee of the nation and/or a Participating Employer.

## **ARTICLE 4. INJURED WORKERS PROGRAM BENEFITS**

### **Section 2-401. Basic Provisions**

- A.** To receive any benefits under this Article Four, a Participant must comply with all requirements of Article Five, below.
- B.** A Participant shall be eligible for payment of benefits under this Article Four, only if and when the Participant sustains a Compensable Injury and submits a written work status report from a Provider. Payments made under this Plan by or on behalf of an Employer shall not in any way constitute an admission of liability or responsibility by the Administrator or any Employer, in any respect, concerning any Compensable Injury. All benefits paid under this Plan shall be considered made by the Nation, Administrator and Employer.

Benefits provided under this Plan will not exceed \$1,000,000 in the aggregate for all Compensable Injuries sustained by more than one Participant arising out of a single occurrence or accident. If, but for this limitation, the Plan would pay more than this amount, then the benefits the Plan will pay to each Participant, will be reduced in the same proportion so that the total amount the Plan will pay with respect to the occurrence or accident is limited to \$1,000,000.

### **Section 2-402. Eligibility**

To become eligible to receive payment of benefits under this Article Four in the event of a Compensable Injury, a Participant must follow the eligibility requirements and procedures and policies set forth in Article Five, below. Benefits payable under Section 2-407 of the Plan shall commence on the first Employer scheduled workday after a Compensable Injury, and may continue for a period of up to 90 days (the "Eligibility Period"). Benefits payable under Section 2-403 also shall expire at the end of the Eligibility Period, except that the Eligibility Period may be extended for a Participant in the event of hardship, determined at the sole discretion of the Administrator or as provided in Section 2-404(A)(i). Participant must provide proof of hardship for review by the Administrator.

### **Section 2-403. Medical Benefits and Physical Rehabilitation**

- A.** In the event of a Compensable Injury, the following benefits shall be paid by the Administrator directly to a Provider only if treatment has been pre-approved: (1) hospital bills, doctor and



dental bills, and prescription drugs; and (2) expenses incurred for physical rehabilitation, as recommended by a Provider. However, only expenses which are reasonable and customary in amount, medically necessary, directly related to the Compensable Injury, and incurred on the advice of the Provider acting within the scope of his license shall be payable under this Article Four.

- B. Mileage will be reimbursed to a Participant for reasonable and required out-of-town medical appointments. The standard business mileage rate will be used to calculate mileage payments. Mileage will be taken from the DOT mileage table.

#### **Section 2-404. Providers**

- A. **General.** Medical benefits shall be administered pursuant to Section 2-403 of this Plan to or on behalf of a Participant only if medical treatment for the Participant's Compensable Injury is provided by a Provider. No benefits shall be paid for treatment by other than a Provider or for treatment by a Provider for any medical condition other than a Compensable Injury. The Nation may designate one or more Providers to administer medical treatment to Participants, and the Nation may change designated Providers at any time. In addition, a health care provider which has not been designated as a Provider may be utilized, if (i) a Compensable Injury occurs when the Participant is working at a location other than his or her regular place of employment, and transportation to a Provider is not available and a Provider is not within reasonable proximity to such location, or (ii) an emergency vehicle takes the injured Participant to a health care provider which has not been designated as a Provider. The Administrator may require subsequent treatments to be at the direction of a Provider. If a Participant is referred to a specialist who is not a Provider and is treated by that specialist without prior permission from the Administrator, such treatment will not be considered eligible for payment.

If billing is submitted to the Administrator without accompanying medical records, the bill may not be paid.

- B. **Disagreement with Provider.** In the event that a Participant disagrees with the diagnosis or treatment provided by a Provider, he or she, at Participant's expense, shall have the right to be examined by a second Provider selected by him or her from a panel of Providers selected by the Administrator. In the event that the diagnosis or recommended treatment of the second Provider differs from that of the Provider, the Participant may be examined by a third Provider who shall be selected by the Administrator from a panel of Providers selected by the Administrator. The diagnosis and recommended treatment of the third Provider shall be controlling. The fees of the third Provider shall be shared equally by the Nation and the Participant.

#### **Section 2-405. Death Benefits**

No death benefits are payable under this Plan. Benefits for death of Participants arising out of or related to a Compensable Injury will only be paid pursuant to the provisions of a Participant's Choctaw Nation of Oklahoma Employee Life Insurance Policy.

#### **Section 2-406. Release to Return to Work**

In the course of authorized medical treatment, the Provider may release the injured Participant to return to work, under one of the following options. Upon the Participant's return to work after being released as provided below shall be paid at his or her wage rate in effect on the day of the Compensable Injury.

- A. **Full Duty.** The Participant may resume a full range of duties routinely associated with the performance of his or her job.
- B. **Restricted Duty (Limited or Light Duty).** The Participant may resume some, but not all, of the duties routinely associated with his or her job, or may be restricted in the number of hours worked; or, the Participant may not resume any of the duties routinely associated with his or her job, but may be allowed to perform some other duties for which the Participant has been trained, or may be trained if such position is available. Wage replacement benefits under Section 2-407 will cease on the day the Provider verifies the Participant can return to restricted duty, if available. If restricted duty work is not available, wage replacement benefits shall cease on the day the Provider verifies that the Participant is able to return to full duty, or as provided under Section 2-407.
- C. **Employment At Will Not Affected.** Nothing in this Plan shall be construed as giving any Participant or Employee the right to be retained in the service of an Employer for any period of time, and all Participants and Employees shall remain subject to discharge to the same extent as if this Plan had never been adopted. Subject to the foregoing sentence, for so long as a Participant remains in restricted duty service of an Employer in accordance with Section 2-406(B) above and has not been released for full duty, an Employer shall be obligated under this Article Four to pay the Participant at his or her rate of base wage or salary in effect on the day of the Compensable Injury, for the duration of the Participant's Eligibility Period, as defined in Section 2-402, above.

#### **Section 2-407. Lost Time Injury-Wage Replacement**

- A. A Participant must report to work within one normally scheduled work day after being released by a Provider to return to work for Full Duty or Restricted Duty. Until the Participant is released to return to work after a Compensable Injury, the Participant is not permitted to resume any work-related duties. Prior to such release, a Participant who then meets all requirements for eligibility under this Plan as a result of a Compensable Injury shall be eligible for wage replacement benefits each regular scheduled workday of incapacity after a written work status report from the treating Provider is submitted for each regular scheduled work day of incapacity for a maximum of 90 days from the date of commencement of such benefits. The Participant shall be eligible for wage replacement benefits only until released for work by the Provider. Wage replacement benefits shall be paid at 60% of a Participant's average weekly wage to be calculated in accordance with Section 2-408. Beginning on the first Employer scheduled workday immediately following the day of the Compensable Injury, and continuing for each succeeding week that a Participant has not been released to return to work during the Eligibility Period, wage replacement benefits shall be calculated and paid to the Participant at 60% of the Participant's average weekly wage. For any partial week, benefits under this Section 2-407 shall be paid on a pro rata basis benefit divided by five (5) for each day of disability during the week for Full Time Participants and weekly scheduled number of days for Part Time Participants. The amount payable for wage replacement benefits shall be reduced by amounts the Participant receives from other disability plans covering the Participant. The wage replacement benefits will stop immediately if the Participant is incarcerated.
  - i. A Part Time Participant who has not been released to return to work by a Provider within the 90 day benefit period may continue to receive wage replacement benefits, at the sole discretion of Administrator, until the Participant reaches "Maximum Medical Improvement" as that term is defined in Section 2-201 and as certified by a Provider.

ii. A Full Time Participant who has not been released to return to work by a Provider within the 90 day benefit period may thereafter apply for benefits under the Nation's Long Term Disability Benefit Plan.

- B. In order to be compensated for wage replacement benefits, Participants must have provided to Administrator or Employer a Provider's written work status report verifying Participant's medical condition and inability to work, complete a request for leave form, have a supervisor sign the form and the form given to the Administrator when payroll paperwork is due.
- C. Wage replacement benefits cannot be supplemented by use of Participant's Annual or Sick Leave benefits.
- D. No benefits, savings, or insurance of the injured employee, independent of the provisions of this policy shall be considered in determining the compensation or benefit to be paid under this policy, except as provided in Subsection A of this Section.

#### **Section 2-408. Average Weekly Wage**

"Average Weekly Wage" is the average amount earned by the Participant (including amounts earned from overtime work and any tip monies) during the Participant's applicable wage history period (the "Wage Period"). A participant's Wage Period is:

- A. For a Full Time Participant, who has been employed by an Employer longer than four (4) weeks, the Wage Period shall be the four (4) week period ending with the Sunday immediately preceding the day of the Compensable Injury.
- B. For a Full Time Participant who has been employed by Employer less than four (4) weeks the Wage Period shall be the entire period of the Participant's employment with Employer.
- C. For a Part Time Participant who has been employed by Employer longer than four (4) weeks, the Wage Period shall be the four (4) week period ending with the Sunday immediately preceding the day of the Compensable Injury. The Average Weekly Wage of such Participant may, if determined by the Administrator to be appropriate, be calculated on a daily basis by dividing the number of normally scheduled workdays per week into the dollar amount of the Average Weekly Earnings.
- D. For a Part Time Participant who has been employed by Employer less than four (4) weeks, the Wage Period shall be the entire period of the Participant's employment with Employer.

#### **Section 2-409. Discharge for Paid Benefits**

The delivery of any payment or benefit by the Administrator in good faith to a personal representative, agent, family member, or other person for the use or benefit of the Participant or other recipient entitled thereto shall be deemed a discharge of the Administrator's and Employer's obligations to such Participant or recipient, and the Administrator or Employer shall not be required to make any further payment of benefits if it is determined that a prior payment was made in good faith to the wrong person. The Administrator shall require authorization from the Participant, in writing, for any individual other than Participant to receive delivery of any payment or benefit.

#### **Section 2-410. Termination of Benefits**

A Participant shall not be eligible for benefits for Compensable Injuries suffered after a Participant's status as an Employee terminates, voluntarily or involuntarily. Nothing in this Plan shall be construed as giving any Participant the right to be retained in the service of an Employer for any period of time, and all Participants shall remain subject to discharge to the same extent as if this Plan had never been adopted.

## **ARTICLE 5. ELIGIBILITY FOR INJURED WORKER SYSTEM BENEFITS**

### **Section 2-501. Reporting**

A Participant must immediately verbally report to his or her supervisor every incident that occurs or condition that exists, whether or not he/she believes to be a Compensable Injury as soon as an incident or condition occurs. A verbal report must be made to the supervisor immediately (or as soon as possible under emergency conditions) following the occurrence of the incident or condition the Participant believes led to a Compensable Injury.

Unless an employee or former employee gives oral or written notice to the Employer or former Employer within ten (10) days of the date a Compensable Injury occurs or the Participant receives medical attention from a Provider during the ten-day period from the date a Compensable Injury occurred, the rebuttable presumption shall be that the Compensable Injury was not work related. Such presumption must be overcome by a preponderance of the evidence.

### **Section 2-502. Medical Treatment**

The Participant must follow fully and completely the advice of, and/or the course of treatment prescribed by the Provider, and keep all scheduled appointments to fulfill the prescribed treatment plan. The Provider giving initial medical treatment or the Nation, Administrator or other Employer may require a drug and alcohol-screening test as a precondition to coverage of such treatment under the Plan.

### **Section 2-503. Other Requirements**

If any of the following are determined by the Administrator (at any point in time) to have occurred, the Participant's eligibility for benefits under this Plan shall immediately terminate:

- A.** If the alleged Compensable Injury is not a Compensable Injury as defined in this Plan, or if the alleged Compensable Injury is discovered not to have been caused by an accident, but rather to have been a pre-existing condition, intentional, feigned, or an attempt to defraud the Employer.
- B.** If the Participant fails to comply with any of the requirements or provisions of this Plan.
- C.** If the alleged Compensable Injury was not reported in accordance with Section 2-501 above.
- D.** If the Participant fails to follow the directions of the Provider in accordance with Section 2-502 above.
- E.** If the Participant fails to report for work with Employer within one normally scheduled work day upon being released by the Provider.
- F.** If the Participant refuses to submit to drug and/or alcohol testing as may be required under Section 2-502 above, or if the alleged Compensable Injury is determined by the Administrator to

have resulted in whole or in part from the loss of normal use of the Participant's mental or physical faculties resulting from voluntary introduction into the body of alcohol or a prohibited or controlled substance, substance analogue, or dangerous drug, including, without limitation, gradual or prolonged usage, with or without intoxication at the time of the alleged Compensable Injury.

- G.** If it is determined by the Administrator the alleged Compensable Injury was caused by horseplay, scuffling, fighting, altercation, or other inappropriate behavior.
- H.** If the alleged Compensable Injury results from an act of declared or undeclared war.
- I.** If it is determined by the Administrator the Participant was riding as a pilot or crewmember of any vehicle or device for aerial navigation at the time of the alleged Compensable Injury, unless the Participant is employed by the Nation as a pilot or crewmember.
- J.** If it is determined by the Administrator the alleged Compensable Injury arose from voluntary participation in an off-duty recreational, social or athletic activity.
- K.** If it is determined by the Administrator the alleged Compensable Injury arose out of an act of a third person intended to injure the Employee or to cause the Employee harm because of personal reasons and not directed at the Participant as an Employee or because of his employment with the Employer.

#### **Section 2-504. Subrogation**

If the Participant's Compensable Injury is caused by a third party's wrongful act or negligence, the following provisions shall apply:

- A.** To receive any Plan benefits for such Compensable Injury, the Participant must agree in writing:
  - i.** that the Administrator, on behalf of Nation and/or Employer, (as the sole source for payment of benefits under the Plan) will be subrogated to any recovery from the third party for the full amount of any benefits paid under the Plan before the Participant obtains any recovery from the third party and without regard to whether the Participant has been fully compensated for any injuries suffered or damages incurred;
  - ii.** not to take any action which would prejudice Nation, Administrator or Employer's subrogation rights;
  - iii.** to cooperate in doing what is reasonably necessary to assist Nation, Administrator or Employer in any recovery, including, but not limited to, signing and delivering documents to evidence or secure the right of recovery; and
  - iv.** to include in any liability claim against any third party any benefits payable to or on behalf of the injured party under this Plan.
- B.** Nation, Administrator or Employer will be subrogated only to the extent of the Plan benefits paid because of that Compensable Injury.

- C. Subrogation rights of the Nation, Administrator or Employer under this Section will not be jeopardized merely because Nation, Administrator or Employer fails to recognize or claim its right of subrogation until after paying Plan benefits, or if Nation, Administrator or Employer recognizes or claims its right of subrogation, but fails to obtain the written agreement provided at 2-504(A) above, before paying Plan benefits. Any Plan benefits paid to the Participant or his legal representative must be returned to Nation, Administrator or Employer immediately if the Nation, Administrator or Employer requests the recipient execute, deliver and fully comply with the written agreement provided at 2-504(A) above, and the recipient of such Plan Benefits fails or refuses to execute, deliver or comply fully with such agreement.
- D. The Participant, by participation in this Plan, agrees that his or her estate and the legal representative of such estate, shall be obligated to agree that Nation, Administrator or Employer will be subrogated to any recovery or right of recovery the estate has against any third party with respect to the Compensable Injury or with respect to any wrongful death claim or action.

## **ARTICLE 6. ADMINISTRATION**

### **Section 2-601. Nation Designation**

The Administrator shall be the person, persons, or entity designated in writing by the Nation acting through the Chief of the Nation or his designee as constituting the Administrator. If the Nation does not so designate an Administrator, the Nation shall itself be the Administrator. The initial Administrator under this Plan is hereby designated as the Nation.

### **Section 2-602. Recusal**

The Administrator or any individual appointed to a decision making position may abstain from participation in reviewing a claim due to a conflict of interest.

In event of recusal of an Administrator or other Designee, the Nation may act as Administrator, or may appoint a successor Administrator if the Nation intends to continue this Plan. During any period in which selection of an Administrator is pending, the Nation shall act as Administrator.

### **Section 2-603. Rights and Duties**

The Administrator is authorized to adopt such rules and to take such actions, as it deems necessary, desirable, or appropriate to carry out the provisions and purposes of this plan, and shall have the authority to control and manage the operation and administration of this Plan. To achieve the purposes of this Plan, the Administrator shall have the discretionary power and authority to construe and interpret this Plan, and to make equitable adjustments for any mistakes or errors made in administration of this Plan. In construing this Plan, and in exercising its power under provisions requiring Administrator approval, the Administrator shall attempt to ascertain the purpose of the provisions in question, and when such purpose is known or reasonably ascertainable, such purpose shall be given effect to the extent feasible. Likewise, the Administrator is authorized to determine all questions with respect to the individual rights of any Participant, eligible dependents or any Participant, and Employees under this Plan, including, but not limited to, all issues with respect to eligibility for benefits. The Administrator shall have all powers necessary or appropriate to accomplish its duties under this Plan, including, but not limited to, the power to:

- A. Adopt rules of procedure and regulations necessary for proper and efficient administration of this Plan, provided such rules and regulations are not inconsistent with the terms of this Plan. All rules and decisions of the Administrator shall be uniformly and consistently applied to all Participants in similar circumstances;
- B. Maintain complete and accurate records of all Plan transactions and distributions. The Administrator shall maintain Plan books or account, records, and other data in the manner necessary for proper administration of this Plan;
- C. Enforce the terms of this Plan and the rules and regulations it adopts, a copy of which shall be made available upon written request to the Administrator;
- D. Review benefit claims and render decisions on benefit claims under this Plan;
- E. Furnish any Employer or Participant, upon written request, with information which such Employer or Participant may require for tax purposes;
- F. Employ accountants, attorneys, or other persons (who also may be employed by or represent the Nation) for such purposes as the Administrator considers necessary or desirable in connection with its duties hereunder; and
- G. Perform any and all other acts necessary or appropriate for proper management and administration of the Plan.

#### **Section 2-604. Indemnification**

Individual Administrators and Named Fiduciaries of the Plan while acting in good faith and within the scope of their duties are hereby indemnified by Nation and/or Employers against any and all liabilities arising by reason of any act or failure to act made in good faith and pursuant to the provisions of this Plan, including expenses reasonably incurred in the defense of any claim relating thereto.

#### **Section 2-605. Non-Discriminatory Exercise of Authority**

Whenever, in the administration of this Plan, any discretionary action by the Administrator is required, the Administrator shall exercise its authority in a non-discriminatory manner, so that all persons similarly situated will receive substantially the same treatment under this Plan.

#### **Section 2-606. Duties of Third Party Administrator**

If a Third Party Administrator is appointed by the Nation, such Third Party Administrator shall provide such services and assistance to the Administrator and/or the Nation as are provided for in an agreement between such Third Party Administrator and the Nation. Such services and assistance may include the duty to:

- A. Supervise the establishment and maintenance of records by the Nation containing relevant data pertaining to any Participants or dependents and their rights under this Plan and to ascertain that such persons received the benefits to which they may be entitled under this Plan;
- B. Interpret and construe the provisions of this Plan, decide any disputes which may arise relative to the rights of a Participant or his beneficiary under the terms of this Plan and, in general, direct the administration of this Plan; provided, however, the Third Party Administrator's interpretation of this

Plan or action under this Plan shall at all times be subject to the review and approval of the Administrator; and

- C. Prepare an annual report of the activities of this Plan, for the Nation, as of the last day of each Plan Year, in such form as may be required by the Nation.

The Third Party Administrator shall be entitled to receive the fees from the Nation agreed by the Nation and the Third Party Administrator.

### **Section 2-607. Denial of Benefits; Notification**

If any claim for benefits under this Plan is wholly or partially denied, the Administrator shall notify the Claimant of its decision in writing. Such notifications shall be written in a manner calculated to be understood by the Claimant, and shall contain (i) specific reason for the denial, (ii) specific reference to pertinent Plan provisions, (iii) a description of any additional material or information necessary for further investigation or consideration of the claim, and (iv) information as to the steps to be taken if the Claimant wishes to appeal the denial of the claim in accordance with Chapter Three of this Act. Such notification shall be given within sixty (60) days after the claim is received by the Administrator (or within one hundred and twenty (120) days, if special circumstances require an extension of time for processing the claim, and if written notice of such extension and circumstances is given to Claimant within the initial sixty (60) day period). If such notification is not given within such period, the claim shall be considered denied as of the last day of such period, and the Claimant may appeal the claim.

## **ARTICLE 7. FUNDING THIS PLAN**

### **Section 2-701. Non-Insured, Non-Funded Benefits**

Payment of all benefits under this Plan with respect to each Participant (or other person entitled to benefits under this Plan) shall be made solely out of the general assets of the Nation or Employer. Benefits payable out of such assets shall not be entitled to any priority over other claims against any Employer. The Employer has the sole and complete obligation to pay benefits under this Plan and by agreeing to participate in this Plan selects and appoints the Administrator as its agent to make any payments required on its behalf. No Employer shall have any obligation to establish any fund or trust for the payment of benefits under this Plan. No benefits described under this Plan shall be assignable by any Participant to any creditor, or transferable to any other party or entity. The benefits described by this Plan shall not constitute a trust for the benefit of any Participant or Employee.

### **Section 2-702. No Employee Contributions**

Employees shall neither be required nor permitted to make any contributions to this Plan.

## **ARTICLE 8. ADOPTION OF PLAN BY EMPLOYEES**

### **Section 2-801. Adoption Procedure**

Any subsidiary or affiliate of the Nation may become a Participating Affiliate under this Plan provided that:



- A. The Board of Directors or other governing authority of the Nation approves the adoption of the Plan by the subsidiary or affiliate and designates such subsidiary or affiliate as an Employer; and
- B. The subsidiary or affiliate adopts the Plan together with all amendments then in effect by appropriate resolutions of the Board of Directors or other governing authority of the subsidiary or affiliate.

#### **Section 2-802. Effect of Adoption by Employer**

Any subsidiary or affiliate of an Employer which adopts the Plan pursuant to Section 2-801 shall be deemed to be a Participating Affiliate for all purposes hereunder, and shall be considered a “Participating Affiliate”, unless otherwise specified in the resolutions of the Board of Directors or other governing authority of the Nation designating the subsidiary or affiliate as a Participating Affiliate.

#### **Section 2-803. Obligations of Employer**

Each Participating Affiliate shall pay any amounts necessary to fund any benefits hereunder for its Participants. Each Participating Affiliate shall keep such records and furnish such information with respect to its Employees, as the Administrator shall require. Each Participating Affiliate may be required to pay its pro rata share of the costs of administering this Plan and benefits hereunder.

### **ARTICLE 9. AMENDMENT AND TERMINATION**

#### **Section 2-901. Amendment**

The provisions of this Plan may be amended at any time and from time to time by the Nation. Each amendment to this Plan shall be approved by resolution of the Board of Directors or other governing authority of the Nation. Unless an amendment expressly provides otherwise, all Employers shall be bound by any amendment adopted pursuant to this Section. Each Employer shall be sent a copy of any amendment to or modification of, the Plan and shall be presumed to have consented thereto unless it shall object within thirty (30) days after receiving written notice of the modification or amendment.

#### **Section 2-902. Termination**

The Nation reserves the right to terminate or modify this Plan at any time, by resolution of the Tribal Council of the Choctaw Nation of Oklahoma or other governing authority. Upon termination of this Plan, the then existing benefit rights of all Participants affected thereby shall become payable as the Administrator may then direct.

### **ARTICLE 10. MISCELLANEOUS PROVISIONS**

#### **Section 2-1001. Non-Alienation of Benefits**

To the fullest extent permitted, payments, benefits, or rights of any Participant under this Plan shall not be subject to any claim of any creditor, and, in particular, all such payments, benefits, and rights shall be free from attachment, garnishment, trustee’s process, or any other legal or equitable process available to any creditor of such Participant. No Participant shall have the right to alienate, anticipate, pledge, encumber,

hypothecate, or assign any benefit, or payment, contingent or otherwise, which he or she may expect to receive under this Plan.

#### **Section 2-1002. No Contract of Employment**

Neither the establishment of this Plan nor any modification hereof, nor the creation of any fund, trust, or account, nor the payment of any benefit hereunder, shall be construed as giving any Participant or Employee, or any person, the right to be retained in the service of the Nation or an Employer, and all Participants and other Employees shall remain subject to discharge at will, to the same extent as if this Plan had never been adopted.

#### **Section 2-1003. Heirs, Assigns and Personal Representatives**

This Plan shall be binding upon the heirs, executors, administrators, successors, and assigns of the parties, including the Nation and each Participant, estate of a Participant, and beneficiary of a Participant, present and future.

#### **Section 2-1004. Title to Assets**

No Participant shall have any right to, or interest in, any assets of this Plan, or the Nation or other Employer, upon termination of his or her employment or otherwise.

#### **Section 2-1005. Expenses**

All expenses for management and administration of this Plan shall be paid by the Nation.

#### **Section 2-1006. No Admission of Liability**

Payment made under this Plan by the Administrator on behalf of an Employer shall not in any way constitute an admission of liability or responsibility by the Administrator on behalf of an Employer for a Compensable Injury.

#### **Section 2-1007. Compromise and Release**

Nothing in this Act shall impair the rights of the parties to compromise any liability which is claimed to exist on account of Compensable Injury. If the Claimant agrees with the final decision of the Administrator or if Claimant agrees to a compromise, a memorandum of such agreement signed by the Nation, Administrator or Employer and the Participant shall be placed in the file regarding the Participant's claim. This agreement shall be deemed binding upon the parties thereto, and may be enforced by civil action in Tribal Court. Such agreements may be made during any phase of a claim under the Plan.

### **Chapter 3. Appeals.**

#### **Section 3-101. Appellate Procedure**

Within thirty (30) days after the date on which a Claimant or Employer receives a written notice of a decision by the Administrator on a claim (or within thirty (30) days of a claim being considered denied under 2-606), if Claimant or Employer disagrees with the decision, Claimant or Employer may file a

notice of appeal with the Tribal Court. Receipt of the written notice of decision shall be deemed to have occurred either on the date of actual receipt or the expiration of five (5) calendar days after mailing, whichever occurs earlier.

### **Section 3-102. Tribal Court Proceeding**

The Tribal Court proceeding shall be administered in accordance with the Rules of the Tribal Court. The Tribal Court shall be charged with the responsibility to review the claim on the record and the decision of the Administrator, and shall notify the Claimant and/or Employer and Administrator of its decision in writing. The notification shall be written in a manner calculated to be understood by Claimant. The Tribal Court's decision on review shall be made within sixty (60) days after the notice of appeal is filed with the Tribal Court (or within one hundred twenty (120) days, if special circumstances require an extension of time for processing the request and if written notice of such extension and circumstances is given to all parties within the initial sixty (60) day period).

### **Section 3-103. Notice of Appeal**

- A.** Filing of a notice of appeal with the Tribal Court shall be done by certified mail, return receipt requested or personally, with Claimant and/or Employer and Administrator receiving a file-stamped copy of the notice of appeal within ten (10) days of such filing with the Tribal Court.
- B.** The notice of appeal must include:
  - i.** Completed Worker's Injury Form (WIFORM);
  - ii.** A brief summary of the relevant facts;
  - iii.** A brief statement of the disputed issues;
  - iv.** A brief statement of the relief sought;
  - v.** All other evidence or data submitted by either party in connection with consideration of the case, provided all parties have had access to such evidence;
  - vi.** A copy of the final written decision under review; and
  - vii.** A signed declaration that the information submitted is true and correct to the best of the Claimant's knowledge.
- C.** Upon receipt of the notice of appeal, the Administrator will provide Claimant and/or Employer, and Tribal Court a copy of the Administrator's case file for the claim within ten (10) days of receipt of notice of the appeal.
- D.** The Tribal Court's assertion of jurisdiction over the appeal is contingent upon compliance with all requirements of this Act, including the filing deadlines established in Section 3-101.

### **Section 3-104. Hearing**

- A.** The tribal court, in its own discretion, may determine that additional evidence or testimony is material and the Tribal Court may hold a hearing.

- B. The Claimant and/or Employer and Administrator shall have the right to be represented by an attorney or other spokesperson in all matters presented to the Tribal Court.
- C. The Tribal Court shall have the right to cross-examine the Claimant and all witnesses and to perform such discovery activity as may be deemed necessary to fully explore all aspects surrounding the alleged Compensable injury.
- D. The Tribal Court shall not be bound by the rules of evidence or by technical or formal rules of procedure and may conduct investigations in such a manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out the spirit of this Act.
- E. In all proceedings before the Tribal Court, the burden of proof shall be upon the Claimant.

### **Section 3-105. Disposition of Administrator Decisions; Remand**

In any proceeding for the review of the Administrator's decision, the Tribal Court may affirm the Administrator's decision, it may set aside or modify the decision, or it may reverse the decision. Depending upon the Tribal Court's disposition of the appeal, in its discretion and to effectuate its decision on review, the Tribal Court may remand the matter to the Administrator with direction for such further proceedings as may be appropriate.

### **Section 3-106. Failure to Comply with Time Limits**

In the event a Claimant fails to file a written notice of appeal of the Administrator's decision on his or her claim for benefits within the thirty (30) day time period described in Section 3-101, above, the Administrator's decision shall be deemed final and Claimant's right to appeal that decision shall be deemed forever barred.

### **Section 3-107. Authority of the Tribal Court**

The Tribal Court shall have the final discretion and authority to interpret and apply all the terms and conditions of this Plan as to any matter on appeal contesting a decision. The Tribal Court's decision shall be subject only to an "abuse of discretion" review in the Choctaw Nation of Oklahoma Court of Appeals. The decision of the Court of Appeals shall be final.

### **Section 3-108. Costs and Attorney's Fees**

- A. **Costs-** The Claimant shall be required to pay, and submit with the notice of appeal, the then current filing fee for the Tribal Court; provided that said fee shall be refunded to the Claimant if said person prevails at Tribal Court.
- B. **Attorney Fees-** If, upon appeal, additional relief is granted to the Claimant, a reasonable fee for the services of the Claimant's attorney may be fixed by the Tribal Court. Attorney fees granted by the court shall not exceed ten (10%) of the amount of the award.