

**Memorandum of Agreement
Between the [] Tribe
and the U.S. Department of Homeland Security,
U.S. Customs and Border Protection
Regarding an Enhanced Tribal Card Program**

The U.S. Department of Homeland Security (DHS), through its component U.S. Customs and Border Protection (CBP), and [] Indian Tribe (hereinafter "Tribe"), collectively, "the Parties,"

RECOGNIZING THAT

1. The Western Hemisphere Travel Initiative (WHTI) implements a congressional mandate that all U.S. citizens and other travelers seeking to enter the United States from foreign locations within the Western Hemisphere present a passport or other appropriately designated document that establishes the bearer's identity and citizenship.
2. The goal of WHTI is to strengthen border security and facilitate entry into the United States for U.S. citizens and legitimate international travelers.
3. The United States has a special relationship with federally recognized Indian tribes, and federal agencies have a responsibility under Executive Order 13175 to consult and coordinate with tribes on a government-to-government basis when formulating or implementing policies that have tribal implications.
4. New document requirements under WHTI may have an impact on members of federally recognized tribes who cross the U.S. land borders.
5. The Parties have a shared commitment to support the Tribe's project to develop a WHTI-compliant enhanced tribal card (ETC) that will be issued by the Tribe to qualifying Tribal members on a voluntary basis.
6. A successful project will serve the mutual interests of DHS and the Tribe by expediting and facilitating cross-border trade and travel, and by providing an additional secure travel document option to eligible members of the Tribe.

HEREBY AGREE AS FOLLOWS:

1. Authorities.

- 1.1. CBP. CBP is authorized to enter into this MOA on behalf of DHS pursuant to 6 U.S.C. § 112(b); 8 U.S.C. § 1185 note; 8 C.F.R. § 235.1; *Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry From Within the Western Hemisphere* (the "WHTI Land and Sea Final Rule"), 73 Fed. Reg. 18,384 (Apr. 3, 2008); and DHS Delegations 7010.3 and 7105.

1.2. Tribe. [Please fill in the authorities under which the Tribe may enter into this MOA.]

2. ETC Program Requirements.

2.1. ETC Format. The Tribe must incorporate into its ETC all of the elements listed in A through C below in a manner acceptable to CBP. CBP will test the ETC prior to approving its production for compliance with this Section and any related agreements, and to ensure that the ETC meets CBP's security standards and interoperability requirements.

- A. Document Security Features. The ETC will include document security features designed to deter forgery and counterfeiting and promote confidence in the card format. The ETC must utilize multiple layers of security features including, at a minimum, the following: micro-printing, optically variable inks, ultraviolet sensitive inks, deliberate errors, an opacity marker to create secure cards, unique fonts, and overlapping data elements. The ETC must also contain a control number unique to each ETC card. The Tribe will provide CBP with all technical information necessary to detect the document security features included in the ETC.
- B. Facilitative Technology. The ETC will utilize facilitative technology that enables CBP to validate the ETC bearer's identity, tribal membership, and U.S. citizenship electronically and in real time. The facilitative technology incorporated into the ETC will include a machine readable zone (MRZ) utilizing optical character recognition (OCR) technology, and a vicinity radio frequency identification (RFID) chip. The Tribe and CBP will jointly develop and memorialize in a Service-Level Agreement (SLA) the technical specifications for the facilitative technology, including specifications for the electronic validation process.
- C. Printed Information. The face of the ETC will contain: the bearer's full legal name (subject to truncation per the ICAO-9303 standard), date of birth, gender, full facial photograph, tribal membership, and citizenship; the ETC issuance date or ETC expiration date; and the word "enhanced" in the card title (e.g., "[Tribe] Enhanced Tribal Card").

2.2. ETC Holder Information. The Tribe will provide CBP with access to information concerning each Tribe ETC holder (ETC Holder Information) for the purpose of implementing this Agreement. This access will be provided in accordance with both the SLA and an Information Sharing Agreement (ISA) to be developed jointly by CBP and the Tribe. In accordance with the SLA and ISA, the Tribe will ensure that ETC Holder Information provided to CBP is current and accurate, and that changes to

ETC Holder Information, including changes to the status of an individual ETC, are communicated promptly to CBP.

2.3. ETC Eligibility Criteria. The Tribe may issue an ETC only to an individual who establishes identity, membership in the Tribe, and U.S. citizenship in conformance with this MOA and tribal membership standards. The Tribe will not issue an ETC in the event that the ETC program staff cannot verify an applicant's identity, membership in the Tribe, or U.S. citizenship for any reason, including the inability to verify the authenticity of a document submitted in support of an ETC application.

- A. Identity. Prior to issuing an ETC, the Tribe's ETC program staff must verify the applicant's identity through, at a minimum, the presentation, verification, and visual comparison against the applicant of two or more of the documents listed in Addendum A to this MOA, at least one of which must include the applicant's photograph and at least one of which must include the applicant's date of birth.
- B. Tribal Membership. Prior to issuing an ETC, the Tribe's ETC program staff must confirm that the applicant is a member of the Tribe. The criteria used by the Tribe to determine membership are set forth in Addendum B to this MOA.
 - i. The Tribe must be able to provide CBP, upon request, with written validation that the applicant meets the Tribe's enrollment criteria.
 - ii. In accordance with Section 2.10 of this MOA, the Tribe must provide prior written notice to CBP of a material change to tribal membership criteria that would affect ETC program enrollment.
- C. Citizenship. Prior to issuing an ETC, the Tribe's ETC program staff must verify that the applicant is a U.S. citizen through the presentation of one or more of the documents listed in Appendix C to this MOA.

2.4. ETC Application and Issuance Process. The Tribe will implement a uniform ETC application process that is consistent with this MOA.

- A. Program Staff. ETC applications may be processed and ETCs may be issued only by members of the Tribe's ETC program staff who meet the eligibility requirements of Section 2.7 and the training requirements of Section 2.8 of this MOA.
- B. Supporting Documentation Verification. Prior to issuing an ETC, the Tribe's ETC program staff must authenticate supporting source documents that are presented by the applicant to establish his or her eligibility for an ETC. The ETC program staff will authenticate supporting documents by searching for key security features and,

when available, by verifying documents electronically with issuing authorities.

- C. Applicant Interview. Prior to issuing an ETC, the Tribe's ETC program staff must conduct an in-person investigative interview with the applicant. The interview is designed to further establish a link between the applicant and his or her supporting source documents, and is an integral part of verifying an applicant's identity, tribal membership, and U.S. citizenship. The Tribe will develop a standard interview template and will provide investigative interview training to the members of its staff who conduct interviews. This investigative interview training will include instruction on how to look for behaviors that may suggest an impostor or intent to commit fraud.
- D. Facial Image Capture. The Tribe will subject each person applying for an ETC to a mandatory facial image capture and will maintain the image in the applicant's ETC file even if no ETC is issued.
- E. False Statements. Each applicant will sign a declaration that states the information presented in the ETC application is true and correct to the best of the applicant's knowledge and advises the applicant of the legal penalties associated with knowingly and willfully providing false information in connection with the application. The Tribe will refer potential fraud cases to law enforcement for potential criminal prosecution.
- F. Personally Identifiable Information. The Tribe will advise each applicant of CBP's policies regarding the use of personally identifying information collected and transmitted to CBP for purposes of the ETC program, as reflected in the system of records notice for the Non-Federal Entity Data Systems. The applicant will acknowledge in writing that he or she has been advised of these policies.
- G. Application Denials. The Tribe must deny the ETC application of an applicant whom the Tribe's ETC program staff determines is ineligible. When an application is denied, the ETC program staff may suggest to the applicant that he or she apply for a U.S. passport, an Enhanced Driver's License (where available), and any other appropriate WHTI-compliant document.
- H. Application Retention. The Tribe will retain an electronic or hard copy of each ETC application, including all source documentation presented in support of an application. Copies of supporting source documents will be shared with CBP at CBP's request, if CBP determines they are necessary for law enforcement or auditing purposes.

- I. Quality Assurance. The Tribe will establish a quality assurance program consisting of an audit of a sample of ETC applications to ensure compliance with the terms of this MOA and all related agreements.

2.5. ETC Validity Period and Cancellation Procedures.

- A. Validity Period. The validity period for an ETC cannot exceed eight years from the date of issuance.
- B. Cancellation Procedures. The Tribe will create procedures for invalidating and canceling previously issued ETCs in appropriate circumstances, to be documented in the Security Plan in compliance with Section 2.9. If the Tribe determines that an ETC is lost or stolen, any new ETC issued to the holder of that ETC will contain a new control number that invalidates the number associated with the lost or stolen document. When the Tribe cancels or invalidates an ETC, the Tribe must immediately update its ETC information systems and share relevant information with CBP as specified in the ISA and SLA.

2.6. ETC Production Requirements. The Tribe will produce all ETCs through a central production process.

- A. Production Facility Security. The Tribe will ensure physical security standards are in place to prevent unauthorized access to areas where the Tribe's ETC will be produced or issued.
- B. ETC Production Materials. The Tribe will maintain full accountability for all materials used in ETC production. The Tribe will develop a security plan in accordance with Section 2.9 of this MOA to ensure the security and proper usage and destruction of the materials used in ETC production. All blank document materials will be held in a separate secure repository with controlled access.
- C. ETC Delivery. Once produced, an ETC may be provided directly to the U.S. Postal Service by the central production facility for delivery to the applicant, or it may be delivered to the Tribe's issuing authority for provision to the ETC applicant. In the event that an ETC applicant cannot receive delivery of the ETC through the U.S. Postal Service, the ETC applicant will be allowed to retrieve the ETC directly from the Tribe's issuing authority. Undelivered ETCs that are returned to the Tribe will be considered invalid and destroyed.

2.7. ETC Program Staff Eligibility. The Tribe must ensure that all individuals involved in the eligibility decisions for, issuance of, or production of the Tribe's ETC, or who have the ability to affect the information that appears on the ETC, or who have access to ETC production or storage facilities (hereinafter referred to in this section as "individuals involved in the ETC

program”), have undergone background checks acceptable to CBP in conformance with this section.

- A. **Background Checks.** The Tribe will ensure that background checks for reliability, criminal history, and security risks are conducted for each individual involved in the ETC program prior to the start of the individual’s involvement and on an annual basis thereafter. These background checks will include a name- and fingerprint-based criminal history check, using at a minimum the FBI’s National Crime Information Center and the Integrated Automated Fingerprint Identification System database.
- B. **Disqualifying Criminal Offenses.** If the Tribe’s background check for an individual involved in the ETC program reveals a disqualifying criminal offense, that individual cannot be utilized in the Tribe’s ETC program. For purposes of this MOA, a disqualifying criminal offense means:
 - i. A conviction, or verdict of not guilty by reason of insanity, in a federal, state, or tribal jurisdiction of any of the felonies set forth in 49 CFR 1572.103(a), regardless of when the conviction or verdict was entered.
 - ii. A conviction for, or admission of committing the essential elements of, any of the criminal offenses referenced in 49 CFR 1572.103(b) in a federal, state, or tribal jurisdiction within the 7 years preceding the application for employment in the Tribe’s ETC program.
 - iii. Release from incarceration for any of the criminal offenses referenced in 49 CFR 1572.103(b) in a federal, state, or tribal jurisdiction within the 5 years preceding the application for employment in the Tribe’s ETC program.
 - iv. A want, warrant, or indictment in any jurisdiction for a felony referenced in this Section, until the want or warrant is released or the indictment is dismissed.
- C. **Arrests.** When a fingerprint-based background check discloses an arrest for a disqualifying criminal offense without indicating a disposition, the Tribe must determine the disposition of the arrest. The individual cannot be utilized in the ETC program until he or she has been determined to qualify under this Section including, in the case of an indictment, a determination that the indictment has been dismissed.

2.8. ETC Program Staff Training. The Tribe will ensure that each individual who is involved in the eligibility decisions for or issuance of the Tribe’s

ETC, or who has the ability to affect the information that appears on the Tribe's ETC, is trained with respect to ETC program policy and operational procedures, fraud detection, and characteristics of both genuine and fraudulent documents used in the ETC application process. The Tribe will provide updated training to these individuals with respect to these topics on an annual basis.

- 2.9. Security Plan. The Tribe will develop and implement a single written security plan to address the Tribe's facilities, systems, and personnel involved in the enrollment, issuance, and production of ETCs. The Security Plan should be marked as a restricted-access document and maintained in a secure manner, to include restricting access to authorized individuals with a need to know and preventing unauthorized access or disclosure. The Security Plan must address, at a minimum:
- A. Physical security and access controls for the buildings used to manufacture or issue ETCs and the storage areas for card stock and other materials used in ETC production.
 - B. Reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the Tribe's ETC information systems.
 - C. Reasonable administrative, technical, and physical safeguards (including development of a privacy policy) to protect the security, confidentiality, and integrity of personally identifiable information maintained in the Tribe's ETC records and information systems.
 - D. Physical security features for the face of the ETC.
 - E. Training requirements for individuals who are involved in eligibility decisions for, issuance of, or production of the Tribe's ETC, or who have the ability to affect the information that appears on the ETC, or who have access to ETC production or storage facilities.
 - F. An incident response plan, including procedures for notifying CBP in the event of a breach of the security plan.
 - G. Internal audit controls.
 - H. Procedures for revoking and invalidating previously issued ETCs in appropriate circumstances.
- 2.10. Changes to ETC Procedures. The Tribe will provide CBP with at least 60 days written notice prior to implementing a material change to any ETC process or eligibility criteria referenced in this MOA, including a change to criteria related to determining tribal membership that would affect ETC program enrollment. If CBP determines that the changes

affect the security or integrity of the ETC program, CBP will provide written notice to the Tribe of the reasons for that determination within 5 days. Upon receiving this notice, the Tribe will immediately suspend production of new ETCs. Once the Tribe addresses the identified deficiencies in the criteria or processes to CBP's satisfaction, CBP will notify the Tribe that CBP is satisfied with the corrective action, and production of new ETCs may resume.

- 2.11. Third-Party Contractors. The Tribe may utilize a third-party contractor in connection with the ETC production process. If the Tribe utilizes a third-party vendor for this purpose, the Tribe must ensure that the vendor complies with all production, staff eligibility, security, and confidentiality requirements of this MOA.

3. ETC Designation and Acceptance.

- 3.1. CBP Initial Determination. The Tribe will provide CBP with the information necessary for a determination that the Tribe's ETC will be issued in a manner that it is appropriate for designation by the Commissioner of CBP as an acceptable alternative document for Western Hemisphere land and sea U.S. border crossing in accordance with the WHTI Land and Sea Final Rule. The Tribe will also provide CBP with the opportunity to test the ETC pursuant to Section 2.1 of this MOA.
- 3.2. ETC Designation. Once CBP is satisfied that the Tribe's ETC program complies with the requirements of this MOA and all related agreements, and following successful testing of the ETC, CBP will designate through publication of notice in the Federal Register the Tribe's ETC as an acceptable WHTI-compliant document that provides proof of identity and citizenship for purposes of entering the United States by land or sea from contiguous territories or adjacent islands within the Western Hemisphere.
- 3.3. ETC Acceptance. Upon designation of the Tribe's ETC as an acceptable WHTI document, and consistent with the terms of the regulations implementing WHTI, CBP will accept valid and lawfully obtained Tribe ETCs for border crossing purposes, including establishing the bearer's identity and citizenship upon the bearer's application for admission to the United States at a land or sea port of entry when arriving from contiguous territories or adjacent islands within the Western Hemisphere. Border crossing purposes includes the entire process whereby CBP determines the admissibility of travelers applying for admission to the United States and enforces the laws of the United States administered by CBP at the border with regard to such travelers. Notwithstanding presentation of an ETC, the bearer shall continue to be subject to examination or inspection under the immigration and other laws of the United States as applicable upon entering the United States.

3.4. Result of Noncompliance with MOA. CBP's continued acceptance of the Tribe's ETCs for border crossing purposes is conditioned on the Tribe's compliance with this MOA and all related agreements. If CBP becomes aware of any ETC issued in noncompliance with this MOA or related agreements, CBP reserves the right at its sole discretion to immediately cease accepting the Tribe's ETCs for border crossing purposes until such time as the Tribe resolves the noncompliance to CBP's satisfaction. CBP will notify the Tribe in a timely manner if CBP ceases accepting the Tribe's ETCs under this provision.

4. Audits.

4.1. CBP Audit Right. CBP may at any time, upon the provision of 3 business days advance notice to the Tribal point of contact, audit the Tribe's ETC program to ensure compliance with the terms of this MOA and all related agreements.

4.2. Pre-Designation Audit. CBP will audit the Tribe's ETC program before the initial determination of the ETC's acceptability.

5. Costs and Non-Financial Assistance.

5.1. ETC Costs. The Tribe is responsible for all costs and investments necessary to meet all information sharing, card issuance, document security, employee screening and training, technology and other ETC requirements under this MOA.

5.2. No Obligation of Federal or Tribal Funds. This MOA does not obligate DHS or other federal funds and is not intended to provide any funding or financial support for the Tribe's ETC project. This MOA does not obligate the Tribe to appropriate or expend any of the Tribe's funds and is not intended to provide any funding or financial support for CBP.

5.3. Non-financial Assistance. CBP will provide reasonable technical, logistical, or other non-financial assistance as determined by CBP to be necessary for successful implementation of the ETC program.

6. Points of Contact.

6.1. CBP POC. The point of contact for CBP is: Colleen Manaher, Director, Western Hemisphere Travel Initiative, Office of Field Operations, U.S. Customs and Border Protection, 1300 Pennsylvania Ave., NW Washington, DC 20229.

6.2. Tribe POC. The point of contact for the Tribe is: [Insert Tribal POC].

7. Confidentiality.

- 7.1. **Applicability.** This Section applies only to the transfer of information incidental to building or maintaining the infrastructure necessary to create or maintain the ETC program. The transfer of personally identifiable information from the Tribe to CBP for border crossing purposes is not covered by this Section 7 and shall instead be handled in accordance with the Privacy Act of 1974, as amended; the system of records notice for the Non-Federal Entity Data Systems; and the terms of this MOA.
- 7.2. **Exchange of Information.** Each Party may disclose information in confidence to the other Party. The receiving Party will maintain the confidentiality of this information and may use this information solely to provide services under this MOA. Except as required by law, each Party will not disclose such information received under this MOA to any third party without the written consent of the providing Party, except for disclosures to employees of authorized contractors who provide services pursuant to this MOA and who agree in writing not to disclose this information.
- 7.3. **Requests for Further Use or Disclosure.** The receiving Party will give prompt notice to the providing Party of any request for, use of, or disclosure of information provided in confidence under this Section and will assist the providing Party in responding to any request, remedying any misuse, or remedying any inappropriate disclosure.

8. Term and Termination.

- 8.1. **Term.** This MOA will remain in effect until it is terminated pursuant to this Section.
- 8.2. **Termination.** Either Party may terminate this MOA without cause upon 30 days advance written notice to the other Party. If this MOA is terminated, CBP will stop accepting the Tribe's ETCs as provided for in this MOA and the Parties will mutually determine how any data provided under this MOA is to be returned, destroyed, used, or stored.

9. No Third-Party Rights Created. This MOA does not confer a right or benefit on behalf of any third party or private person, and does not otherwise confer a right on any third party to enforce a term of this MOA, including individual members of the Tribe.

10. Sovereign Immunity. This MOA does not waive the sovereign immunity from suit, if any, possessed by the Parties for any purpose.

11. Entire Agreement. This MOA and any related agreements represent the entire agreement between the Parties. No other understanding, oral or otherwise, regarding the subject matter of this MOA will be deemed to exist or to bind any of the parties hereto, subject to the provisions in this MOA regarding modification of the terms of the agreement.

12. Modification. Modifications to the MOA may be made only by mutual consent of the Parties through the points of contact identified above, in the form of a written modification, signed and dated by both Parties.

13. Effective Date. This MOA is effective upon signature by both Parties.

IN WITNESS WHEREOF, the Parties have signed 2 duplicate originals of this MOA.

U.S. Department of Homeland Security
U.S. Customs and Border Protection

Colville Tribes

(Signature)

(Signature)

(Print Name)

(Print Name)

(Title)

(Title)

(Date)

(Date)

APPENDIX A: IDENTITY DOCUMENTS

The following documents may be presented by an ETC applicant to establish identity, pursuant to Section 2.3.A of the MOA.

1. A valid, unexpired U.S. Passport.
2. A certified state- or Tribe-issued birth certificate.
3. A Certificate of Naturalization (Form N-550, N-570) or Certificate of Citizenship (Form N-560, N-561).
4. A Department of State Consular Report of Birth Abroad (FS-240, DS-1350, F-545).
5. A U.S. military identification card.
6. A valid State-issued driver license or identification card (excluding temporary or learner permits).
7. A federal, state, or municipal government-issued identification card, including a Social Security card.
8. A federal, state, or municipal government-issued document depicting marriage, divorce and/or other name changes.
9. A Tribe identification card. [If such a Tribal document exists, describe the document.]

APPENDIX B: TRIBAL MEMBERSHIP CRITERIA AND PROCESSES

[Tribal Membership Criteria should be specified here.]

APPENDIX C: CITIZENSHIP DOCUMENTS

The following documents may be presented by an ETC applicant to establish U.S. citizenship, pursuant to Section 2.3.C of the MOA.

1. A valid, unexpired U.S. passport.
2. An original or certified copy of a birth certificate denoting a birthplace in the United States and issued by the Tribe or by a city, county or state.
3. A Consular Report of Birth Abroad or Certification of Birth.
4. A Naturalization Certificate or Certificate of Citizenship.