

**CENPATICO**  
**PREVENTION SERVICES AGREEMENT**  
**ORIGINATION DATE: 09/01/2010 REVISED: 01/01/2014**

THIS PREVENTION SERVICES AGREEMENT ("Agreement") is made by and between Gila County Health Department ("Subcontractor"), and operating in accordance with the laws of the state of Arizona ("State" or "the State"), and Cenpatico Behavioral Health of Arizona, LLC, Cenpatico of Arizona, Inc., ("Cenpatico"). Subcontractor and Cenpatico are to be collectively referred to herein as the "Parties."

WHEREAS, the Parties wish to confirm their joint commitment to the responsible provision of Covered Behavioral Health Services, as set forth in State Solicitation HPO32097, in a manner that is both consistent with the amount of money actually provided by the State for such services and financially transparent to the public and to government regulators,

NOW, THEREFORE, in consideration of the premises and mutual promises herein stated, the Parties hereby agree as follows:

**ARTICLE I**

**DEFINITIONS AND ACRONYMS**

As used in this Agreement and each of its Attachments, the following terms (and the plural thereof, when appropriate) shall have the meaning set forth herein, except where the context makes it clear that such meaning is not intended.

- 1.1 **Action** means the denial or limited authorization of a requested service, including the type or level of service; 1) the reduction, suspension or termination of a previously authorized service; 2) the denial, in whole or in part, of payment of service; 3) the failure to provide services in a timely manner; 4) the failure to act within established timeframes for resolving an appeal or complaint and providing notice to affected parties; and 5) the denial of the Title XIX/XXI eligible person's request to obtain services outside the network.
- 1.2 **ADHS Information System** means the ADHS/DBHS Information Systems in place or any other data collection and information system as may from time to time be established by the ADHS/DBHS.
- 1.3 **ADHS/DBHS** means the Arizona Department of Health Services, Division of Behavioral Health Services.
- 1.4 **ADHS/DBHS – Cenpatico Contract** means the contract for Solicitation HPO32097, including attachments, entered into between ADHS/DBHS and Cenpatico pursuant to which Cenpatico has agreed to provide managed behavioral health delivery systems to Behavioral Health Participants in designated Geographic Service Areas, as may be amended or supplemented from time to time, and the documents incorporated therein.
- 1.5 **ADHS/DBHS Clinical and Recovery Practice Protocols** means those Clinical Practice Guidelines published by ADHS/DBHS to assist behavioral health Subcontractors in Arizona's public behavioral health system, as may be amended or supplemented from time to time.
- 1.6 **ADHS/DBHS Covered Behavioral Health Services Guide** means the document, including appendices that list all Covered Behavioral Health Services, as may be amended or supplemented from time to time.
- 1.7 **ADHS/DBHS Cultural Competency Plan ("CCP")** means the document, including appendices that list objectives and action steps to integrate and promote culturally competent services within the State behavioral health system, as may be amended or supplemented from time to time.

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- 1.8 **ADHS/DBHS Financial Reporting Guide for Regional Behavioral Health Authorities** means the document, including appendices that set monthly, quarterly and annual financial reporting requirements for RBHAs, as may be amended or supplemented from time to time.
- 1.9 **ADHS/DBHS Policies and Procedures Manual** means the document, including appendices that list ADHS/DBHS policies and procedures, as may be amended or supplemented from time to time.
- 1.10 **ADHS/DBHS Prevention Framework for Behavioral Health** means the document, including appendices, listing behavioral health prevention initiatives, as may be amended or supplemented from time to time
- 1.11 **ADHS/DBHS Office of Program Support Operations and Procedures Manual** means the document, including appendices that list ADHS/DBHS program support procedures, as may be amended or supplemented from time to time.
- 1.12 **ADHS/DBHS Provider Manual** means the document, including appendices that contain requirements applicable to direct subcontractors of Arizona publicly funded behavioral health services, as may be amended or supplemented from time to time.
- 1.13 **ADHS/DBHS Provider Manual-Cenpatico Edition** means the ADHS/DBHS Provider Manual as modified by Cenpatico; as such modification is required pursuant to ADHS/DBHS Provider Manual, Introduction, Page 1. This term includes any amendments, appendices, modifications, supplements, bulletins or notices related to the ADHS/DBHS Provider Manual-Cenpatico Edition that may be made from time to time. Cenpatico shall use best efforts to give Subcontractor advance notice of any amendment or modification of the ADHS/DBHS Provider Manual-Cenpatico Edition that materially affects Subcontractor's performance of its obligations under this Agreement.
- 1.14 **ADHS/DBHS Quality Management Utilization Management Plan** means the document, including appendices, encompassing activities that are to be conducted by ADHS/DBHS and its contractors, and that are designed to improve the quality of services delivered through Arizona's public behavioral health system, as may be amended or supplemented from time to time, and the documents incorporated therein.
- 1.15 **Administrative Costs** means administrative expenses incurred to manage the behavioral health services, including, but not limited to: provider billing, accounting, information technology services, processing and investigating grievances and appeals, legal services (including any legal representation of the Subcontractor at administrative hearings concerning the Subcontractor's decisions, and actions), planning, program development, program development, reporting, personnel management, staff development and training, self-auditing and monitoring, utilization review and quality assurance. Administrative costs do not include expenses related to direct provision of behavioral health services including case management
- 1.16 **Adult** means a person eighteen (18) years of age or older, unless the term is given a different definition by statute, rule, or policies adopted by ADHS.
- 1.17 **Agreement Amendment** means a written document that is issued for the purpose of making changes to this Agreement.
- 1.18 **Appeal** is a request for review of an Action.
- 1.19 **Arizona Administrative Code ("A.A.C.")** means the Rules filed with the Arizona Secretary of State.

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- 1.20 **Arizona Children's Principles** means the ADHS/DBHS principles relating to the delivery of behavioral health services to children as set forth in the ADHS/DBHS Provider Manual-Cenpatico Edition
- 1.21 **Arizona Principles** means the ADHS/DBHS system principles as set forth in the ADHS/DBHS Provider Manual-Cenpatico Edition.
- 1.22 **Attachment** means any attachment, amendment, exhibit and/or schedule to this Agreement, incorporated herein by reference.
- 1.23 **Behavioral Health Disorder** means any behavioral or mental diagnosis and/or substance use (abuse/dependence) diagnosis found in the most current version of the Diagnostic and Statistical Manual or International Classification of Disorders.
- 1.24 **Behavioral Health Paraprofessional** means an individual who meets the applicable requirements in R9-20-204 and has the following: an Associate's Degree, high school diploma, or a high school equivalency diploma
- 1.25 **Behavioral Health Participant** means any adult or child receiving services in or through ADHS/DBHS funded programs.
- 1.26 **Behavioral Health Professional ("BHP")** means a psychiatrist, behavioral health medical practitioner, psychologist, social worker, counselor, marriage and family therapist, substance abuse counselor or registered nurse with at least one (1) year of full time behavioral health work experience and who meets the requirements of A.A.C., Title 9, Chapter 20.
- 1.27 **Behavioral Health Provider** means any individual or facility that delivers behavioral health services in the network.
- 1.28 **Behavioral Health Services** means those services listed in the ADHS/DBHS Covered Behavioral Health Services Guide.
- 1.29 **Behavioral Health Technician** means a staff member of a licensed behavioral health service agency as specified in A.A.C. Title 9, Chapter 20.
- 1.30 **Best Practices** means evidence-based practices, promising practices, or emerging practices.
- 1.31 **Cenpatico Related Entities** means Cenpatico's officers, officials, agents, or employees, and Cenpatico's wholly-owned subsidiaries, parent companies, sister companies, holding companies, and other entities controlled or managed by any such entities or persons
- 1.32 **Child** means an eligible person who is under the age of eighteen (18), unless the term is given a different definition by statute, rule or policies adopted by ADHS/DBHS.
- 1.33 **Contract Year** means a period from July 1 of a calendar year through and including June 30 of the following year.
- 1.34 **Covered Behavioral Health Services** means those Medically Necessary Behavioral Health Services as described and defined in the ADHS/DBHS Covered Behavioral Health Services Guide.
- 1.35 **Credentialing means** the process of obtaining, verifying and assessing information including applicable licensure, accreditation and certification requirements to determine whether a behavioral health professional, a behavioral health technician or a behavioral health provider has the required credentials to deliver Behavioral Health Services to members.

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- 1.36 **Cultural Competence** means a set of congruent behaviors, attitudes and policies that come together in a system, agency, or among professions which enables that system, agency or those professionals to work effectively in cross-cultural situations.
- 1.37 **Days** mean calendar days unless otherwise specified.
- 1.38 **Direct Care Staff** means, in the case where a Subcontractor is a behavioral health care entity, a person or entity who is employed by or otherwise engaged by the entity to provide Covered Behavioral Health Services to Behavioral Health Participants.
- 1.39 **Dual Eligible** means a person eligible for Medicare who is also eligible for Medicaid. When in a medical institution that is funded by Medicaid for a full calendar month, the dual eligible person is not required to pay Co-payments for their Medicare covered prescription medications for the remainder of the calendar year.
- 1.40 **Electronic Medical Record ("EMR")** means the electronic record of health-related information on an individual that is created, gathered, managed, and consulted by licensed clinicians from a single organization who are involved in the individual's health and care.
- 1.41 **Emergency Medical Condition** means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairments to bodily functions, or serious dysfunction of any bodily organ or part. What constitutes an emergency medical condition may not be limited on the basis of lists of diagnoses or symptoms.
- 1.42 **Emergency Behavioral Health Services** means inpatient and outpatient services, as defined in the ADHS/DBHS Covered Behavioral Health Services Guide, provided after the sudden onset of an emergency behavioral health condition. These services must be furnished by a qualified Subcontractor, and must be necessary to evaluate or stabilize the emergency behavioral health condition.
- 1.43 **Encounter** means a record of a covered service rendered by a provider to a person enrolled with a capitated RBHA on the date of service.
- 1.44 **Exhibit** means any item labeled as an Exhibit in this Agreement or placed in the Exhibits section of this Agreement.
- 1.45 **Federal CLAS Standards** means the US Office of Minority Health standards for Culturally and Linguistically Appropriate Services (CLAS), which may be amended or supplemented from time to time and is included as Exhibit F to this Agreement
- 1.46 **Fee-for-Service Member** means a Title XIX or Title XXI eligible individual who is not enrolled with an AHCCCS Acute Care Health Plan ALTCS Contractor or Tribal RBHS
- 1.47 **General Mental Health Adults** means a classification of adult persons age eighteen and older who have general behavioral health issues and have not been determined to have a serious mental illness.
- 1.48 **Generalist Intake Agency** means a contracted provider type requiring full execution of generalist and intake provider functions and requirements. In addition to traditional intake and care coordination

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services, Generalist Intake Agencies are required to deliver flexible and responsive support and rehabilitation services, on a 24/7/365 basis, in the participant's home and community to ensure participants are able to live successfully in the community.

- 1.49 **GMH** means General Mental Health, and is used to designate an adult fund type.
- 1.50 **Health Insurance Portability and Accountability Act of 1996 ("HIPAA")** means Public Law 104-291 Title II Subtitle F and regulations published by the United States Department of Health and Human Services, the administrative simplification provisions and modifications thereof, and the Administrative Simplification Compliance Act of 2001.
- 1.51 **Health Plan Behavioral Health Coordinator** means a contact person and resource for behavioral health providers when problems arise concerning a person's medical care or any other health plan related issue
- 1.52 **Indian Health Service ("IHS")** means the bureau of the United States Department of Health and Human Services that is responsible for delivering public health and medical services to American Indians throughout the country. The federal government has direct and permanent legal obligation to provide health services to most American Indians according to treaties with Tribal Governments
- 1.53 **Inpatient Hospital** means an inpatient facility that provides continuous treatment that includes general psychiatric care, medical detoxification, and/or forensic services in a general hospital, a general hospital with a distinct part or a freestanding psychiatric facility. Includes 24 hour nursing supervision and physicians on site and on call
- 1.54 **Intergovernmental Agreement ("IGA")** means an agreement conforming to the requirements of A.R.S. Title 11, Chapter 7, Article 3 (A.R.S. § 11-951 et seq.).
- 1.55 **Issue Resolution** means a participant or stakeholder complaint brought to Cenpatico from ADHS/DBHS.
- 1.56 **KidsCare** means the Arizona version implementing the Title XXI of the Social Security Act, referred to in federal legislation as the "State Children's Health Insurance Program" ("SCHIP").
- 1.57 **Material Change** means an alteration or development within a provider network that may reasonably be foreseen to affect the quality or delivery of Behavioral Health Services provided under this contract.
- 1.58 **Materials** means all property including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
- 1.59 **Non-Title XIX/XXI Funding** means fixed, non-capitated funds, including funds from CMHS and SAPT, State appropriations (other than state appropriations to support the Title XIX and title XXI program), counties and other funds, which are used for services to Non-Title XIX/XXI eligible persons and for services not covered by Title XIX or Title XXI provided to Title XIX and Title XXI Eligible Persons
- 1.60 **Non-Title XIX/XXI Person** means an individual who needs or may be at risk of needing covered services, but does not meet Federal and State requirements for Title XIX or Title XXI eligibility.
- 1.61 **Origination Date** means the later of (a) July 1, 2010 or (b) the Effective Date of the first agreement between and among the Parties for Subcontractor to provide Covered Behavioral Health Services pursuant to the ADHS/DBHS – Cenpatico Contract (Solicitation HP032097).

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- 1.62 **Outreach** means activities to identify and encourage individuals who may be in need of Behavioral Health Services to receive them.
- 1.63 **Participating Behavioral Health Care Subcontractor** means a behavioral health care entity and/or Behavioral Health Professional, including Subcontractor and other institutional Subcontractors and ancillary services Subcontractors, that meets the criteria established in this Agreement and that has contracted with, or on whose behalf a contract has been entered into with Cenpatico to provide Covered Behavioral Health Services to Behavioral Health Participants.
- 1.64 **Prevention Services Provider** means an organization and/or behavioral health professional who meets the criteria established in this contract and has a contract with Cenpatico.
- 1.65 **Promising Practices** means clinical or administrative practices for which there is considerable evidence or expert consensus and which show promise in improving client outcomes, but which are not yet proven by the highest or strongest scientific evidence
- 1.66 **Provider Network** means the agencies, facilities, professional groups or professionals under subcontract to Cenpatico to provide covered services to Behavioral Health Participants and includes the Subcontractor to the extent the Subcontractor directly provides covered services to Behavioral Health Participants.
- 1.67 **Referral for Behavioral Health Services** means any oral, written, faxed, or electronic request for Behavioral Health Services made by any person, or person's legal guardian, family member, an AHCCCS health plan, primary care provider, hospital, jail, court, probation and parole officer, tribal government, Indian Health Services, school, or other state or community agency.
- 1.68 **Regional Behavioral Health Authority ("RBHA")** means an organization under contract with ADHS to coordinate the delivery of Covered Behavioral Health Services to eligible and/or enrolled Behavioral Health Participants in a particular GSA of the State.
- 1.69 **Related Party** means a party that has, or may have, the ability to control or significantly influence a Subcontractor, or a party that is, or may be, controlled or significantly influence by a Subcontractor. Related Parties include, at a minimum, agents, managing employees or persons with an ownership or controlling interest in the disclosing entity, and their immediate families, subcontractors, wholly-owned subsidiaries or suppliers, parent companies, sister companies, holding companies, and other entities controlled or managed by any such entities or persons.
- 1.70 **SAPT** means Substance Abuse Prevention and Treatment Performance Partnership Program pursuant to Division B. Title XXXIII, Section 3303 of The Children's Health Act of 2000 pursuant to Section 1921 – 1954 of the Public Health Service Act and 45 CFR Part 96 Interim Final Rules.
- 1.71 **Services** means covered behavioral health services.
- 1.72 **State** means the State of Arizona and ADHS/DBHS or agency of the State that executes the contract with Cenpatico.
- 1.73 **State Fiscal Year** means the period beginning with July 1 and ending June 30.
- 1.74 **Statistical Significance** means a mathematical measure of change within the sample population, when the sample population is large enough to be considered representative of the overall population. The change is said to be statistically significant if it is greater than what might be expected to happen by

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chance alone. The mathematical threshold is a statistically significant change would occur less than 5% of the time by chance alone.

- 1.75 **Subcontractor** means the contracting party that has executed this Agreement with Cenpatico. Such Subcontractor may be a Behavioral Health Professional, or a behavioral health care entity. If such Subcontractor is a behavioral health care entity, the terms of this Agreement shall also apply to Subcontractor's Direct Care Staff, except for those sections pertaining to insurance.
- 1.76 **Substance Use Disorders** means a range of conditions that vary in severity over time, from problematic, short-term use/abuse of substances to severe and chronic disorders requiring long-term and sustained treatment and recovery management
- 1.77 **Support Services** means covered services provided to facilitate the delivery of or enhance the benefit received from other behavioral health services. Refer to the ADHS/DBHS Covered Behavioral Health Services Guide for additional information.
- 1.78 **Treatment** means the range of behavioral health care received by a behavioral health participant.
- 1.79 **Treatment Services** means covered services provided to identify, ~~prevent~~, eliminate, ameliorate, improve *or* stabilize specific symptoms, signs and behaviors related to, caused by, or associated with a Behavioral Health Disorder.
- 1.80 **Tribal Liaison** means the single point of contact regarding delivery of behavioral health services to American Indian members.
- 1.81 **Tribal RBHA** means an American Indian tribe that has an IGA with ADHS/DBHS to coordinate the delivery of behavioral health services to members of a federally recognized Tribal Nation
- 1.82 **Uniform Terms and Conditions** means those terms contained in Exhibit C to this Agreement.

1.83 **Acronym List:**

A.A.C	Arizona Administrative Code
A.R.S	Arizona Revised Statutes
ADA	Americans with Disabilities Act
AOC	Administrative Office of the Courts of the Arizona Supreme Court
BBA	Balanced Budget Act of 1997
BHP	Behavioral Health Professional
CAP	Corrective Action Plan
CCO	Chief Clinical Officer
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CFR	Code of Federal Regulations
CLAS	National Culturally Linguistically and Appropriate Service Standards
CLEAR	Council on Licensure, Enforcement and Regulation
CLIA	Clinical Laboratory Improvement Amendments
CMO	Chief Medical Officer
COB	Coordination of Benefits
CPR	Cardio Pulmonary Resuscitation Certification
DBHS	Division of Behavioral Health Services

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DDD	Division of Developmental Disabilities
DES	Arizona Department of Economic Security
DIG	Data Infrastructure Grants
DRA	Deficit Reduction Act of 2005
EPLS	Excluded Provider List System
FTP	File Transfer Protocol
GAAP	Generally Accepted Accounting Principles
GAAS	General Accepted Auditing Standards
HHS	Health and Human Services
HIE	Health Information Exchange
HIPAA	Health Insurance Portability and Accountability Act
HIV	Human Immunodeficiency Virus
HMIS	Homeless Management Information System
HRC	Human Rights Committees
ID	Identification
IDEA	Individuals with Disabilities Act
LEP	Limited English Proficiency
MPS	Minimum Performance Standard
NACHA	National Automated Clearing House Association
OHR	Office of Human Rights
OIG	Office of Inspector General
OMB	Office of Management and Budget
OPI	Office Program Integrity
PATH	Project for Assistance in Transition from Homelessness
PDSA	Plan Do Study Act
PIP	Performance Improvement Plan, Process or Projects
RBHA	Regional Behavioral Health Authority
RFP	Request for Proposals
RSA	Rehabilitation Services Administration
SA	Substance Abuse
SAMHSA	Substance Abuse and Mental Health Services Administration
SAPT	Substance Abuse Prevention and Treatment
TDD	Telecommunications Device for the Deaf
ZIP	Zone Improvement Plan

**ARTICLE II**

**CENPATICO'S OBLIGATIONS**

- 2.1 **Obligations.** Cenpatico shall be responsible for the administrative activities necessary or required for the commercially reasonable operation of a Regional Behavioral Health Authority, in accordance with the ADHS/DBHS - Cenpatico Contract and the documents incorporated by reference therein, the Arizona Principles, and applicable Federal, State and local laws and regulations. Such activities shall include, but are not limited to, providing training to participating subcontractors as specified in the ADHS/DBHS Provider Manual-Cenpatico Edition, and ensuring that participating subcontractors have

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access to the ADHS/DBHS Covered Behavioral Health Services Guide and ADHS/DBHS Provider Manual-Cenpatico Edition and any updates either through the internet or in paper form.

**ARTICLE III**

**SUBCONTRACTOR'S ADMINISTRATIVE OBLIGATIONS**

- 3.1 **Legal Entity Requirement:** The Subcontractor shall be an incorporated or legal entity for the purpose of conducting business as a Subcontractor with Cenpatico.
- 3.2 **Licensure.** Subcontractor represents and warrants that Subcontractor is and shall remain at all times during the term of this Agreement properly credentialed, licensed, certified and accredited or trained in accord with all federal, State and local laws and regulations, the ADHS/DBHS Provider Manual-Cenpatico Edition and the ADHS/DBHS Practice Protocols. Subcontractor shall take all necessary and appropriate steps to verify and assure that Subcontractor is so credentialed, licensed, accredited or trained in good standing at all times during Subcontractor's participation in the provision of Covered Behavioral Health Services pursuant to this Agreement, and shall submit evidence of current good standing of such credentials, licenses, certifications, accreditations and training to Cenpatico at any time upon request. Subcontractor shall submit copies of all renewal license(s) to Cenpatico within sixty (60) days of expiration or provide documentation of renewal application. Renewal documentation must include any and/or all communication with OBHL regarding the renewal process, including corrective actions.
- 3.3 **Non-Discrimination Requirements.** Subcontractor shall comply with State Executive Order No. 99-4 that mandates that all persons, regardless of race, color, religion, sex, national origin, or political affiliation, shall have equal access to employment opportunities, and all other applicable federal and State laws, rules and regulations, including the ADA and Title VI. Subcontractor shall take positive action to prevent discrimination against applicants for employment, employees, and persons to whom it provides service due to race, creed, color, religion, sex, national origin, or disability.
- 3.4 **Co-location.** In the event Subcontractor seeks to co-locate on the same premises with one or more behavioral health providers, Subcontractor shall enter into a formal written agreement with all entities seeking to co-locate. Subcontractor shall provide Cenpatico with a copy of the co-located provider agreement within ten (10) business days after execution of the agreement. The agreement shall address, at a minimum, the methodology to ensure compliance with the following provisions in the Arizona Administrative Code, Title 9, Chapter 20: R9-20-204, Staff Member and Employee Qualifications and Records; R9-20-205, Clinical Supervision; and R9-20-206, Orientation and Training.
- 3.5 **Compliance Requirements for A.R.S. § 41-4401: Immigration Laws and E-Verify Requirements.** The Subcontractor warrants compliance with all Federal, State, and local immigration laws and regulations, including those relating to the immigration status of employees. The Subcontractor further warrants its compliance with A.R.S. § 23-214, Subsection A, which reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program." A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of this Agreement and the Subcontractor may be subject to monetary penalties up to and including termination of this Agreement. Failure to comply with an ADHS and/or Cenpatico audit process to randomly verify the employment records of Subcontractors shall be deemed

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a material breach of this Agreement and the Subcontractor may be subject to penalties up to and including termination of this Agreement. Cenpatico retains the legal right for ADHS and/or Cenpatico to inspect the papers of any employee who works on this Agreement to ensure that the Subcontractor is complying with the warranty identified herein.

- 3.6 Health Insurance Portability and Accountability Act of 1996. The Subcontractor warrants that it is familiar with the requirements of HIPAA and HIPAA's accompanying regulations and will comply with all applicable HIPAA requirements in the course of this Agreement. Subcontractor warrants that it will cooperate with ADHS and Cenpatico in the course of performance of this Agreement so that Cenpatico and Subcontractor will be in compliance with HIPAA, including cooperation and coordination with ADHS Privacy Officer, Cenpatico Compliance Officer, and other compliance officials required by HIPAA and its regulations. Subcontractor will sign any documents that are reasonably necessary to keep ADHS, Cenpatico and Subcontractor in compliance with HIPAA, including, but not limited to, business associate agreements. If requested by ADHS or Cenpatico, Subcontractor agrees to sign the "Arizona Department of Health Services Pledge to Protect Confidential Information" and to abide by the statements addressing the creation, use and disclosure of confidential information, including information designated as protected health information and all other confidential or sensitive information as defined in policy. In addition, if requested, Subcontractor agrees to attend or participate in HIPAA training offered by ADHS or Cenpatico, or to provide written verification that the Subcontractor has attended or participated in job related HIPAA training that is: (1) intended to make the Subcontractor proficient in HIPAA for purposes of performing their services required and (2) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the ADHS HIPAA Compliance Officer or the Cenpatico Compliance Officer.
- 3.7 Credentialing and Re-credentialing Criteria. Subcontractor shall comply with the processes for credentialing, re-credentialing, and/or training contained in the ADHS/DBHS Provider Manual- Cenpatico Edition. Further, Subcontractor represents and warrants as follows: (i) that currently, and for the duration of this Agreement, Subcontractor shall remain in compliance with all applicable federal, State and local laws and regulations; (ii) that Subcontractor shall comply with all laws regarding safety, unemployment insurance, disability insurance and worker's compensation; (iii) that for the duration of this Agreement, Subcontractor shall remain accredited by an appropriate accrediting body acceptable to Cenpatico; and (iv) that Subcontractor will perform its duties in accordance with all applicable federal, State and local licensing requirements, as well as applicable federal, State and local standards of professional ethics and practice. In the event that, at any time, these representations or warranties become untrue because of a material change in status of Subcontractor, Subcontractor shall notify Cenpatico within ten (10) days of the date Subcontractor receives notice of the same. Without limiting the generality of the foregoing, Subcontractor shall notify Cenpatico of the following: (a) any situation which develops involving Subcontractor when notice of that situation must be given to any regulatory body with authority over Subcontractor; or (b) when a change in Subcontractor's license to operate is affected, or may reasonably be affected, as a result of any investigation conducted, or complaint filed, by the official body with regulatory authority over Subcontractor. Subcontractor further warrants and represents that Subcontractor has written policies (i) that are implemented and enforced; (ii) that describe the duties of all persons or entities that Subcontractor employs or otherwise engages the services of for the provision of Covered Behavioral Health Services to Behavioral Health Participants; and (iii) that are in accordance with statutory and/or regulatory requirements for licensure, delegation, supervision and collaboration, as appropriate.

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- 3.8 Adherence to Supervision Requirements. Subcontractor shall follow good clinical supervision practices and make available adequate resources for supervision, as defined by ADHS/DBHS Provider Manual-Cenpatico Edition and State and federal laws.
- 3.9 Staffing Requirements. Subcontractor shall have organization, management and administrative systems capable of meeting all Agreement requirements with clearly defined lines of responsibility, authority, communication and coordination within and between departments of the organization. Subcontractor shall not employ any individual or entity that has been debarred, suspended or otherwise lawfully prohibited from participating in any procurement activity, or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549 [43 CFR 438 810(a) and (b)]. Subcontractor shall employ sufficient staffing and utilize appropriate resources to comply with this Agreement. The Subcontractor's resource allocation must be adequate to achieve outcomes in all functional areas within the organization. Adequacy will be evaluated based on outcomes and compliance with contract requirements, including the requirement for providing culturally competent services. If the Subcontractor does not achieve the desired outcomes or maintain compliance with this Agreement, Cenpatico may exercise its right to remedies under this Agreement. Subcontractor shall participate in face-to-face meetings with Cenpatico for purposes of assessing Subcontractor compliance. Subcontractor shall require all staff to have the training, education, experience, orientation, and credentialing, as applicable to perform assigned job duties.
- 3.10 Required Disclosures.
1. Subcontractor shall provide Cenpatico with written notice within one (1) business day from the date the Subcontractor first receives notice, whether written or oral, of any of the events indicated below. Upon request, Subcontractor will provide Cenpatico with additional documentation or information regarding any such event:
    - a. Subcontractor becomes aware of an action to suspend, condition, revoke, terminate, or subject to terms of probation or other restriction, Subcontractor's license, certification or accreditation relevant to the provision of Covered Behavioral Health Services, including, but not limited to, Subcontractor's federal and/or State drug license;
    - b. Subcontractor voluntarily surrenders or terminates any of Subcontractor's licenses, certifications, accreditations or privileges in anticipation of an action described in this Agreement;
    - c. Subcontractor is convicted of a fraud or felony or is suspended, debarred or excluded from participation in a federal health care program (as defined in 42 U.S.C. § 1320a-7b(f));
    - d. An act of nature or any event beyond Subcontractor's control occurs that substantially interrupts all or a portion of Subcontractor's business or practice, or that has a materially adverse effect on Subcontractor's ability to perform its or his/her obligations hereunder;
    - e. Subcontractor fails to maintain the insurance coverage required under this Agreement and in accordance with the Uniform and Special Terms and Conditions;
    - f. Any malpractice claim, lawsuit, judgment or settlement in which Subcontractor is a named defendant;



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services. If Cenpatico determines non-compliance of the materials, the Subcontractor shall be responsible for the payment of all costs incurred by Cenpatico for testing and inspection.

**3.14 Marketing Restrictions**

1. The Subcontractor shall not use for marketing:
  - a. Incentive items except for use in connection with outreach activities, subject to Cenpatico prior approval;
  - b. Solicitation of any individual face-to-face, door-to-door, or over the telephone;
  - c. Provision of promotional materials, incentives, or any other activity to influence enrollment in conjunction with the sale or offering of any private insurance;
  - d. Television advertising;
  - e. Direct mail advertising;
  - f. Marketing of non-mandated services;
  - g. Utilization of the word "free" in reference to covered services;
  - h. Listing of providers in marketing and open enrollment materials who do not have signed agreements with Cenpatico.
  - i. Use of the Cenpatico or ADHS logo unless approved by Cenpatico;
  - j. Inaccurate, misleading, confusing or negative information about Cenpatico and ADHS, and any information that may defraud participants or the public; and
  - k. Discriminatory marketing practices as specified in A.A.C, Title 9, Chapter 22, Article 5, A.A.C., Title 9, Chapter 28, Article 5 and A.A.C, Title 9, Chapter 31, Article 5.
2. Subcontractor shall review and revise all outreach and marketing materials on an annual basis to reflect current practices.

**3.15 Advertising, Publishing, and Promotion of Agreement.** The Subcontractor shall not use, advertise, or promote information for commercial benefit concerning this Agreement without the prior written approval of Cenpatico.

**3.16 Mergers, Reorganization or Changes in Ownership or Control.** The Subcontractor shall obtain prior approval of Cenpatico and sign a written amendment to this Agreement for any merger, reorganization or change in ownership of Subcontractor. The Subcontractor shall submit a detailed merger, reorganization and/or transition plan to Cenpatico for review and include strategies to ensure uninterrupted services to behavioral health recipients, ensure that services to behavioral health recipients are not diminished, and that major components of the Subcontractor's organization and programs relevant to this Agreement are not adversely affected by the merger, reorganization, or change in ownership.

**3.17 Notification of Service Level Changes.**

1. Subcontractor shall notify and obtain written approval from Cenpatico before making any material changes in the size, scope or configuration of Subcontractor's services.

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2. Subcontractor shall notify Cenpatico in writing within one (1) day of knowledge of or anticipation of any unexpected material change, a deficiency, any material change to a Subcontractor's license, certification or registration, or any condition which terminates, suspends or limits a Subcontractor from effectively participating in the network, including the necessity for transition of members to a different provider. The notice shall include information on:
  - a. How the change, deficiency or condition affects service delivery;
  - b. The Subcontractor's plan to minimize disruption to service delivery and address changes in services or service providers;
  - c. The number of people affected by the change, deficiency or condition in each program category; and
  - d. The Subcontractor's plan to communicate the change, deficiency or condition to-community stakeholders.

- 3.18 **Certification of Compliance - Anti-Kickback and Laboratory Testing.** By signing this Agreement, the Subcontractor certifies that it has not engaged in any violation of the Medicare Anti-Kickback statute (42 USC §§1320a-7b) or the "Stark I" and "Stark II" laws governing related-entity referrals (PL 101-239 and PL 101-432) and compensation.

Except for payment for the Subcontractor's performance under the terms of this Agreement, Subcontractor or any director, officer, agent, employee or volunteer of the Subcontractor shall not request or receive any payment or other thing of value either directly or indirectly, from or for the account of Cenpatico or the Subcontractor as consideration for or to induce either Cenpatico or the Subcontractor to enter into a contract, or for any referrals of enrolled persons to the Subcontractor for the provision of Covered Behavioral Health Services

- 3.19 **Pandemic Declaration.** In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government, or the World Health Organization, which makes performance of any term under this Agreement impossible or impracticable, Cenpatico shall have the following rights:
1. After the official declaration of a pandemic, Cenpatico may temporarily void this Agreement in whole or specific sections, if the Subcontractor cannot perform to the standards agreed upon in the initial terms;
  2. Cenpatico shall not incur any liability if a pandemic is declared and emergency measures are undertaken to manage costs or service delivery;
  3. Once the pandemic is officially declared over and/or the Subcontractor can demonstrate the ability to perform, Cenpatico, at its sole discretion, may reinstate the temporarily voided Agreement.
- 3.20 **Declaration of Emergency.** Upon a declaration by the Governor that an emergency situation exists in the delivery of behavioral health service delivery system that without intervention by government agencies, threatens the health, safety or welfare of the public, Cenpatico can undertake actions to negotiate an agreement with an alternative entity to provide services. Cenpatico shall immediately notify the affected Subcontractor of its intention.

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- 3.21 **Conflict of Interest.** Subcontractor shall not undertake any work that represents a potential or existing conflict of interest, or which is not in the best interest of Cenpatico, ADHS/DBHS or the State without prior written approval by Cenpatico. Subcontractor shall fully and completely disclose to Cenpatico a potential or existing conflict of interest.
- 3.22 **Compliance with Applicable Contracts, Manuals and Guides.** Subcontractor shall, cooperate and comply with all requirements of the following documents:
1. **Documents Incorporated by Reference**
    - a. The following documents, and any subsequent amendments, modifications, and supplements to these documents adopted by ADHS/DBHS (as applicable), are incorporated and made a part of this Agreement by reference:
      1. ADHS/DBHS Covered Behavioral Health Services Guide
      2. ADHS/DBHS Provider Manual-Cenpatico Edition
      3. ADHS/DBHS Policies and Procedures Manual
      4. ADHS/DBHS Office of Program Support Operations and Procedures Manual
      5. Office of Program Integrity, Operations and Procedures Manual
      6. ADHS Accounting and Auditing Procedures Manual
      7. ADHS/DBHS Financial Reporting Guide for Regional Behavioral Health Authorities
      8. ADHS/DBHS Quality Management/Utilization Management (QM/UM) Plan and Work Plan
      9. ADHS/DBHS Framework for Prevention in Behavioral Health
      10. ADHS/DBHS Cultural Competency Plan
      11. ADHS/DBHS Clinical Guidance Documents:
      12. Title XIX Children's System of Care Network Development Plan
      13. ADHS QM/MM/UM Performance Improvement Specifications Manual
      14. ADHS/DBHS Provider Network Listing
      15. Adult System of Care Network Development Plan
      16. Children's System of Care Vision and Principles
  2. **Revisions to Documents Incorporated by Reference**
    - a. Subcontractor shall comply with the terms, conditions, and requirements of these documents incorporated by reference, as amended/revised from time to time, consistent with State and Federal law and the Contract Order of Precedence as outlined in the Exhibit C, Uniform Terms and Conditions, as if the terms and conditions of the documents had been fully set forth in this Agreement.
    - b. ADHS/DBHS, Cenpatico, and Subcontractor acknowledge that the behavioral health system is constantly changing and evolving to reflect new and innovative approaches to treatment, and the delivery and management of behavioral health services. The common goal of

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ADHS/DBHS, Cenpatico, and Subcontractor is to develop and apply new and innovative strategies to better serve Behavioral Health Participants. As a result, ADHS/DBHS, from time to time, may revise and update the above stated documents to allow for the orderly implementation of changes to the behavioral health system.

- c. Cenpatico will notify Subcontractor when the changes will be made to the Documents Incorporated by Reference. The Subcontractor shall have fifteen (15) days to notify Cenpatico if it has any disagreement with the new provisions.

3. Other Documents

This section contains references to documents, also incorporated by reference where applicable, that guide the development of the behavioral health system requirements. From time to time these documents may be amended. If any such amendments result, there may be changes to this Agreement or documents incorporated by reference in accordance with the section above. Subcontractor shall cooperate and comply with all applicable requirements of the following documents, including the documents incorporated by reference therein:

a. Administrative Rules

- 1. Arizona Administrative Code R2-19 Administrative Hearing Rules
- 2. Arizona Administrative Code R9-20 Behavioral Health Service Agencies: Licensure

b. Balanced Budget Act of 1997

c. Arizona Procurement Code

d. Grants

- 1. Substance Abuse Prevention and Treatment Performance Partnership Program pursuant to Division B, Title XXXIII, Section 3303 of the Children's Health Act of 2000 and pursuant to Section 1921-1954 of the Public Health Service Act and 45 CFR Part 96 Interim Final Rules (SAPT)

4. Other

- a. State Plan

**ARTICLE IV**

**SUBCONTRACTOR'S SERVICE PROVISION OBLIGATIONS**

- 4.1 Provision of Covered Behavioral Health Services. Subcontractor agrees to provide, or arrange for the provision of, the Covered Behavioral Health Services described in this Agreement (including Exhibit A and all other exhibits) to Behavioral Health Participants. If Subcontractor is Direct Care Staff, it agrees to operate only within the scope of their professional practice and training. The population of Behavioral Health Participants to be served by Subcontractor, and Subcontractor's Behavioral Health Participant capacity, shall be as provided in Exhibit A, "Scope of Work". The amount, duration and scope of Covered Behavioral Health Services to be provided by Subcontractor pursuant to this Agreement shall also be as provided in Exhibit A, "Scope of Work". Subcontractor shall provide Covered Behavioral

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Health Services in accordance with all generally accepted clinical, legal and ethical standards governing Subcontractor and within the standards of practice for quality care generally recognized within the behavioral health community in which Subcontractor is located. Subcontractor acknowledges and agrees that services provided to Behavioral Health Participants which do not constitute Covered Behavioral Health Services or which are provided in a manner inconsistent with this Agreement or the ADHS/DBHS Provider Manual-Cenpatico Edition, shall not be eligible for payment under this Agreement.

- 4.2 **Referrals.** Subcontractor shall comply with all applicable provisions of the ADHS/DBHS Provider Manual-Cenpatico Edition for the making and acceptance of referrals for Covered Behavioral Health Services. Subcontractor shall make referrals of Behavioral Health Participants for Covered Behavioral Health Services only to other Participating Health Care Subcontractors, except: (i) as the need for Emergency Behavioral Health Services may require; (ii) where Cenpatico specifically authorizes the referral; or (iii) as otherwise required by law or by the ADHS/DBHS Provider Manual-Cenpatico Edition. If Subcontractor delivers Covered Behavioral Health Services upon referral, Subcontractor shall make a report, in accordance with the requirements of the ADHS/DBHS Provider Manual-Cenpatico Edition, to the Behavioral Health Participant's PCP.
- 4.3 **Emergency Behavioral Health Services.** In a behavioral health emergency, Subcontractor shall verify eligibility for Covered Behavioral Health Services in accordance with the ADHS/DBHS Provider Manual-Cenpatico Edition and with federal, State and local laws relating to the provision of Emergency Behavioral Health Services, provided that nothing in this provision shall be deemed to require Subcontractor to violate federal or State law regarding the provision of Emergency Behavioral Health Services. Subcontractor shall notify Cenpatico within twenty-four (24) hours or by the next business day of rendering or learning of the rendering of Emergency Behavioral Health Services to a Behavioral
- 4.4 **Cultural and Linguistic Needs.** Subcontractor shall conduct an assessment of the service area's cultural and linguistic needs, and deliver services that address identified cultural and linguistic needs in accordance with ADHS/DBHS Cultural Competency Plan and Cenpatico's Cultural Competency Plan.
- 4.5 **Cooperation with Other Subcontractors, Contractors and State Employees.** Subcontractor shall cooperate fully with Cenpatico, other Subcontractors, and/or State employees in scheduling and coordinating its services with other related services for Behavioral Health Participants. Subcontractor shall afford other contractors reasonable opportunity to provide services and shall not commit or permit any act that interferes with the performance of services by other contractors or by State employees. Subcontractor shall ensure appropriate exchange of clinical information among all other subcontractors, contractors, and State employees to facilitate coordination of care, including service plans, comprehensive assessments and progress reports.
- 4.6 **Dissemination of Information.** The Subcontractor shall upon request, assist Cenpatico in the dissemination of information prepared by Cenpatico, ADHS, or the federal or state government, to its participants and pay for the cost to disseminate and communicate information. . Subcontractor shall ensure that all advertisements, publications and printed materials, which are produced by the Subcontractor, state that the services are delivered under this Agreement with Cenpatico and are funded by ADHS.
- 4.7 **Outreach, Engagement, Re-Engagement, and Closure Requirements.**

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1. Subcontractor shall demonstrate performance of outreach activities to inform the community. of the availability of behavioral health services.
2. Subcontractor shall cooperate with ADHS/DBHS and Cenpatico outreach and marketing initiatives.
3. Subcontractor shall comply with the following:
  - a. Any outreach or incentive item given to persons shall not exceed \$50.00. Any marketing item given away by the Subcontractor shall not exceed \$10.00. The total cost of all marketing and outreach/incentive items given to each member, at each event, may not excel \$50.00 per member;
  - b. All marketing materials shall identify the Subcontractor as a Cenpatico, and ADHS provider; and
  - c. All marketing materials produced by the Subcontractor that refer to the Agreement services shall specify the services are funded through an agreement with Cenpatico.

**ARTICLE V**

**INSURANCE, BONDING, TAX, INDEMNIFICATION AND LOSS PROVISIONS**

**5.1 Indemnification Requirements.**

1. **Subcontractor Indemnification (Non-public Entity).** Subcontractor shall indemnify, defend, save and hold harmless Cenpatico, and its corporate parents, subsidiaries, affiliates, officers, directors, employees, and agents, along with the State of Arizona, Maricopa County and ADHS/DBHS (hereinafter referred to as an "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorney's fees, and costs of claims processing, investigation, and litigation) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Subcontractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Subcontractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the Parties that each Indemnitee shall, in all instances except for claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Subcontractor from and against any and all claims. It is agreed that Subcontractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this Agreement, Subcontractor agrees to waive all rights of subrogation against Cenpatico and any Cenpatico Related Entities, the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from the work performed by or on behalf of the Subcontractor for Cenpatico and/or the State. This indemnity shall not apply if the Subcontractor is an agency, board, commission or university of the State of Arizona.
2. **Subcontractor Indemnification (Public Agency Only).** Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter

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collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its' officers, officials, agents, employees, or volunteers.

3. **Indemnification – Patent and Copyright.** The Subcontractor shall indemnify and hold harmless Cenpatico, the State of Arizona and Maricopa County against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of performance of this Agreement or use by Cenpatico, the State of Arizona or Maricopa County of materials furnished or work performed under this Agreement, Cenpatico, the State of Arizona or Maricopa County shall reasonably notify the Subcontractor of any claim for which it may be liable under this paragraph. If the Subcontractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

5.2 **Insurance.** Subcontractor shall obtain and maintain all insurance outlined below and shall submit a copy of all insurance certificates to Cenpatico. Subcontractor shall procure and maintain, until all of Subcontractor's obligations under this Agreement have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Subcontractor, its agents, representatives, employees or subcontractors. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained herein. Neither Cenpatico nor the State of Arizona or Maricopa County in any way warrant that the minimum limits contained herein are sufficient to protect the Subcontractor from liabilities that might arise out of the performance of the work under this Agreement by the Subcontractor, its agents, representatives, employees or subcontractors, and Subcontractor is free to purchase additional insurance.

1. **Minimum Scope and Limits of Insurance.** Subcontractor shall provide coverage with limits of liability not less than those stated below:

- a. **Commercial General Liability-Occurrence Form:** This policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Products – Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Blanket Contractual Liability – Written and Oral	\$1,000,000
Fire Legal Liability	\$50,000
Each Occurrence	\$1,000,000

The policy shall be endorsed to include coverage for sexual abuse and molestation; this coverage must apply to any Subcontractor with responsibility for participant interaction in person. The policy shall be endorsed to include the following additional insured language: "Cenpatico and any Cenpatico Related Entities, Department of Health Services, the State of Arizona, its Departments, agencies, boards, commissions, universities, and its officers, officials, agents, and employees, and Maricopa County shall be named as additional insured

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with respect to liability arising out of the activities performed by or on behalf of Subcontractor." The Policy shall contain a waiver of subrogation against Cenpatico and any Cenpatico Related Entities, Department of Health Services, the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees and Maricopa County for losses arising from work performed by or on behalf of Subcontractor.

- b. **Automobile Liability:** Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Agreement and covering all Subcontractor officers, agents, employees, and contractors traveling for any business reason associated with this Agreement.

Combined Single Limit (CSL)	\$1,000,000
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- The policy shall be endorsed to include the following additional insured language: "Cenpatico and any Cenpatico Related Entities, Department of Health Services, the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees and Maricopa County shall be named as additional insured with respect to liability arising out of the activities performed by or on behalf of Subcontractor, involving automobiles owned, leased, hired or borrowed by Subcontractor." The Policy shall contain a waiver of subrogation against Cenpatico and any Cenpatico Related Entities, Department of Health Services, the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents and employees and Maricopa County for losses arising from work performed by or on behalf of the Subcontractor.

- c. **Workers' Compensation and Employer's Liability:**

Workers' Compensation	Statutory
Employer's Liability	
Each Accident	\$500,000
Disease – Each Employee	\$500,000
Disease – Policy Limit	\$1,000,000

The policy shall contain a waiver of subrogation against Cenpatico and any Cenpatico Related Entities, Department of Health Services, the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees and Maricopa County for losses arising from work performed by or on behalf of Subcontractor. This requirement shall not apply to: Separately, subcontractors exempt under A.R.S. § 23-901, AND when such subcontractors execute the appropriate waiver (Sole Proprietor/Independent Contractor) form.

- d. **Professional Liability (Errors and Omissions Liability):**

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

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In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, Subcontractor warrants that any retroactive date under the policy shall precede the Origination Date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed. The policy shall cover professional misconduct or lack of ordinary skill for all persons employed by Subcontractor. Professional Liability shall include Medical Malpractice for Behavioral Health Medical Practitioners.

This requirement can be met for independent contractors providing services to the Subcontractor through a policy maintained by Subcontractor or through a personal policy maintained by the independent contractor as long as the policy meets all requirements specified herein.

The policy shall be endorsed to include the following additional insured language: "Cenpatico and any Cenpatico Related Entities, Department of Health Services, the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees and Maricopa County shall be named as additional insured with respect to liability arising out of the activities performed by or on behalf of Subcontractor, involving automobiles owned, leased, hired or borrowed by Subcontractor." The Policy shall contain a waiver of subrogation against Cenpatico and any Cenpatico Related Entities, Department of Health Services, the State of Arizona, its department, agencies, boards, commissions, universities and its officers, officials, agents and employees and Maricopa County for losses arising from work performed by or on behalf of the Subcontractor.

2. **Additional Insurance Requirements.** The policies shall include, or be endorsed to include, the following provisions:
  - a. Cenpatico and any Cenpatico Related Entities, Department of Health Services, the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees and Maricopa County; wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by Subcontractor, even if those limits of liability are in excess of those required by this Agreement.
  - b. Subcontractor's insurance coverage shall be primary insurance with respect to all other available sources.
  - c. Coverage provided by Subcontractor shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
3. **Notice of Cancellation.** Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, permitted to lapse, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to Cenpatico. Such notice shall be sent directly to Cenpatico, Attn: Contracts Department, 1501 W. Fountainhead Parkway, Suite 295, Tempe, AZ 85282, and shall be sent by certified mail, return receipt requested.

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4. Acceptability of Insurers. Insurance is to be placed with duly licensed or approved non-admitted insurers in the State with an "A.M. Best" rating of not less than A-VII. (If the social services program utilizes the Social Service Contractors Indemnity Pool (SSCIP) for insurance coverage, SSCIP is exempt from this A.M. Best rating requirement.) Subcontractor acknowledges that neither Cenpatico nor the State of Arizona in any way warrant that the above-required minimum insurer rating is sufficient to protect Subcontractor from potential insurer insolvency.
  5. Verification of Coverage. Subcontractor shall furnish Cenpatico with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by Cenpatico before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, shall constitute a material breach of this Agreement. All certificates required by this Agreement shall be sent directly to Cenpatico, Attn: Contracts Department, 1501 W. Fountainhead Parkway, Suite 295, Tempe, AZ 85282. Cenpatico reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.
  6. Subcontractors. Subcontractor shall obtain from its subcontractors separate certificates and endorsements for each subcontractor. The Subcontractor shall maintain certificates of insurance from all subcontractors and providers and ensure adequate coverage is provided throughout the term of the subcontractors' agreement. All coverages for subcontractors shall be subject to the minimum requirements identified above.
  7. Approval. Any modification or variation from the minimum insurance requirements listed in this section shall be made by Cenpatico and the Department of Administration, Risk Management Section, whose decisions shall be final. Such action will not require a formal Amendment to this Agreement, but may be made by written notice to Subcontractor.
  8. Exceptions. In the event that Subcontractor or its subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall instead provide Cenpatico with a Certificate of Self-Insurance. If Subcontractor or its subcontractor(s) is/are a State agency, board, commission or university, none of the above shall apply.
- 5.3 Subcontractor's Responsibility for Insurance and Tax Coverage Obligations. Subcontractor shall be fully responsible for all tax obligations, workers' compensation insurance, and all other applicable insurance coverage obligations as stated in this Agreement, for itself and its employees. Neither ADHS/DBHS, nor Cenpatico shall have any responsibility or liability for any such taxes or insurance coverage.
- 5.4 Applicable Taxes
1. Payment of Taxes. The Subcontractor shall be responsible for paying all applicable taxes.
  2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the

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responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

3. **Tax Indemnification.** Subcontractors shall pay all Federal, State and local taxes applicable to its operation and any persons employed by the Subcontractor. Subcontractor shall, and shall require all subcontractors to, hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or State and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
4. **IRS W9 Form.** In order to receive payment, the Subcontractor shall have a current IRS W9 Form on file with the Cenpatico, unless not required by law.
- 5.5 **Risk of Loss.** The Subcontractor shall bear all loss of conforming material covered under this Agreement until received by authorized personnel at the location designated in the purchase order or Agreement. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Subcontractor regardless of receipt.

**ARTICLE VI**

**DATA, RECORDS, AUDITS, AND REPORTING REQUIREMENTS**

- 6.1 **Records.** Subcontractor shall comply with all specifications for record keeping established by Cenpatico and ADHS. All books and records shall be maintained to the extent and in such detail as required by Cenpatico and ADHS. Records shall include, at a minimum, financial statements, records relating to covered behavioral health services, the quality of care, medical records, prescription files, reports, working papers used in preparing reports and other records specified by ADHS, or Cenpatico. Subcontractor shall preserve for a period of six (6) years from the date of final payment under this Agreement. If this Agreement is completely or partially terminated, Contractor shall preserve records relating to the work terminated for a period of six (6) years from the date of termination. Subcontractor shall retain records that relate to grievances, disputes, litigation, or the settlement of claims arising out of the performance of this Agreement, or costs and expenses of this Agreement to which exception has been taken by ADHS, or Cenpatico, for a period of six (6) years after the date of final disposition or resolution thereof.
- 6.2 **Audits.** During the term of this Agreement, and for five (5) years thereafter, Cenpatico, ADHS, and/or the Federal Government may conduct audits to determine Subcontractor's compliance with Federal and State codes, rules, regulations and requirements. Subcontractor shall comply with all applicable policies and procedures relating to the audit of Subcontractor's records, medical audit protocols, any inspection of Subcontractor's facilities, and the surveys of behavioral health recipients and providers and reviews. Subcontractor shall submit data, reports and information for audits upon request from Cenpatico, ADHS, and/or the Federal Government. These audits include, but are not limited to, the following:

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1. **Auditor General Audits.** Subcontractor shall comply with and participate as required in the Performance Audit and other audits conducted by the Arizona Auditor General.
2. **Other Federal and State Audits.** Subcontractor shall comply with and participate as required in other Federal and State audits, including the audit of an inpatient facility.

6.3 **Inspections.** At any time during the term of this Agreement, Subcontractor shall fully cooperate with inspections by Cenpatico, ADHS, the U.S. Department of Health and Human Services, the Comptroller General, the U.S. Office of Civil Rights, or any authorized representative of the Federal or State governments. Subcontractor shall allow Cenpatico and/or any authorized representative of the Federal and State government.

1. Access to Subcontractor's staff
2. Access to books and records related to the performance of this Agreement for inspection, audit, and reproduction. This shall include allowing ADHS to inspect the records of any employee who works on this Agreement to ensure that Subcontractor is in compliance with all Federal and State Immigration laws and regulations. Subcontractor agrees to obtain any necessary releases from Behavioral Health Participants with respect to their records and the information contained therein in order to permit Cenpatico and authorized State and federal agencies access to such records.
3. On-site inspection, or other means, for the purpose of evaluating the quality, appropriateness, timeliness, and safety of services performed under this Agreement. The inspection shall be conducted at reasonable times unless the situation warrants otherwise.

6.4 **Reviews.**

1. **Cenpatico Administrative Reviews.** In its full and unfettered discretion, Cenpatico shall conduct Administrative Reviews, at least annually, of the Subcontractor.

- a. **Scope.** The Administrative Review shall include review of:
  - i. operational and financial program compliance for all programs, including but not limited to State, Federal and contractual requirements
  - ii. clinical and business practices and policies
  - iii. financial reporting systems
  - iv. quality outcomes, timeliness, and access to healthcare services, and
  - v. any other operational and program areas identified by Cenpatico

The Administrative Reviews shall be conducted to identify areas where improvements can be made and make recommendations accordingly, monitor Subcontractor's progress toward implementing mandated programs and corrective action plans, and provide Subcontractor with technical assistance if necessary.

- b. **Procedure.**

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- i. In preparation for the Administrative Review, Subcontractor shall fully cooperate with the Cenpatico Review Team by forwarding, in advance, policies, procedures, job descriptions, contracts, logs, and other information that Cenpatico may request.
  - ii. At the time of the commencement of the review, Subcontractor shall have all requested medical records available. Any documents not requested in advance by Cenpatico shall be made available upon request of the Review Team during the course of the review. Subcontractor personnel, as identified in advance, shall be available to the Review Team at all times during Cenpatico on-site review activities.
  - iii. While on-site, Subcontractor shall provide the Review Team with work space, access to telephone and internet services if available, electrical outlets and privacy for conferences.
  - iv. Following the review, Subcontractor shall be furnished a copy of the Administrative Review Report and given an opportunity to comment on any review findings prior to Cenpatico publishing the final report.
  - v. Recommendations made by the Review Team shall be implemented by Subcontractor to bring Subcontractor into compliance with Federal, State, ADHS/DBHS, and/or Agreement requirements.
  - vi. Cenpatico may conduct follow-up Administrative Reviews to determine Subcontractor's progress in implementing recommendations and achieving program compliance. Follow-up reviews may be conducted at any time after the initial Administrative Review.
- c. Quality Management Reviews. Subcontractor shall make available records and other documentation, and ensure Subcontractor's participation in, and cooperation with, any quality management reviews. This shall include participation in staff interviews
- d. SAMHSA Core Reviews (SAPT). Subcontractor shall comply with and participate as required in Cenpatico, ADHS/DBHS and Federal audits and Core Reviews of services and programs funded through the Substance Abuse Prevention and Treatment Performance Partnership Grants

6.5 MIS Standards and Performance Criteria. The Subcontractor shall use a Cenpatico approved Management Information System (MIS) to collect, analyze, integrate, and report data. The Subcontractor shall utilize electronic transactions in conformance with HIPAA requirements. Subcontractor shall, prior to implementation, notify Cenpatico of planned MIS changes, the estimated impact upon the interface process, and unit and parallel test files, if the Subcontractor plans to make any modifications that may effect any of the data interfaces. The Subcontractor shall not implement the proposed change until Cenpatico evaluates and approves the test data. Subcontractor shall notify Cenpatico in advance of the exact implementation date of all changes and cooperate with Cenpatico if Cenpatico elects to monitor MIS changes for operability and sustainability. Cenpatico shall provide Subcontractor with at least ninety (90) days notice before implementing a change to its MIS system unless Cenpatico determines that the system change must be implemented sooner, and in that instance, provide Subcontractor with as much notice as possible under the circumstances.

6.6 Shared Databases. Subcontractor shall cooperate with Cenpatico in the development of shared databases including those established in the ADHS/DBHS – Cenpatico Contract. Subcontractor shall comply with the Cenpatico administrative requirements established for use of such shared databases.

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- 6.7 **Data Integrity.** Subcontractor is required to ensure that all data submitted to Cenpatico is accurate and timely. Subcontractor is required to maintain processes and procedures to ensure accuracy and timely submission of all data.
- 6.8 **Transparency.** The Parties understand and agree that because public money makes this Agreement possible; all transactions associated with this Agreement must be financially transparent to the public and to government regulators. In addition to other reporting and record keeping requirements set forth in this Agreement, Subcontractor agrees to provide to Cenpatico, within ten (10) days of a written request, any and all additional documentation requested by, and in a form acceptable to, Cenpatico, to support any payment made or to be made by Cenpatico to Subcontractor pursuant to this Agreement.
- 6.9 **Periodic Reporting Requirements.** The Subcontractor shall submit the reports listed in Exhibit E to the Agreement to Cenpatico. The Subcontractor's submission of untimely, inaccurate, or incomplete reports shall constitute failure to report. By submitting reports to Cenpatico, the Subcontractor confirms that the information in the report is accurate and complete.
1. Subcontractor shall be subject to the following standards for determining the adequacy of required reports:
    - a. **Timeliness.** The Subcontractor shall submit reports or information on or before scheduled due dates. All required reports shall be submitted by e-mail to [cbhazdeliverables@centene.com](mailto:cbhazdeliverables@centene.com) no later than 5:00 p.m. on the date due, unless otherwise noted. The Subcontractor may submit to this e-mail address a written request for an extension of a reporting deadline and include a reason for the request for extension and a proposed due date. Requests for extension shall be submitted in writing and shall be received by Cenpatico prior to the report due date. If directed by a Cenpatico department to submit a specific report to a location other than [cbhazdeliverables@centene.com](mailto:cbhazdeliverables@centene.com), the Subcontractor shall post notification of the submission to [cbhazdeliverables@centene.com](mailto:cbhazdeliverables@centene.com) upon delivery to the alternate location;
    - b. **Accuracy.** The Subcontractor shall prepare and submit reports or other information in strict conformity with authoritative sources and report specifications; and
    - c. **Completeness.** The Subcontractor shall fully disclose all required information in a manner that is both responsive and relevant to the report's purpose with no material omissions.
  2. Subcontractor shall comply with all report changes specified by Cenpatico.
  3. Subcontractor shall continue to report beyond the term of the contract when necessary, including the processing of claims and encounter data because of lag time in the filing of source documents by Subcontractor.
- 6.10 **Culture Competency Trained & Cultural Competency.**
1. Behavioral Health Service providers are recruited, trained and evaluated based upon competence in linguistically and culturally appropriate skills for responding to the individual needs of each behavioral health participant and family members.
  2. Provider management reflects cultural diversity in values and action

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3. Provider management strive to improve through periodic cultural self-assessment and modify individual services or the system as a whole as needed to achieve this goal.

**6.11 Business Continuity Plan**

1. Subcontractor is required to develop a Business Continuity Plan that is reviewed and updated on an annual basis and to deal with unexpected events that may negatively and significantly affect its ability to adequately serve members. This plan shall, at a minimum include planning and training for:
  - a. A process to notify staff quickly of a disaster when necessary, such as an employee Call Tree;
  - b. An alternate site(s) for business operations to resume, if the property is destroyed in a disaster.
  - c. A process in place to ensure participants' medical records are secure and back-up medical records are available, in the event medical records are destroyed in a disaster.
  - d. An updated phone list with emergency contact numbers.
  - e. Procedures to prevent the spread of communicable diseases during a pandemic alert.
  - f. Key succession and performance planning if there is a sudden significant decrease in Subcontractor's workforce.
  - g. Alternative methods to ensure there are products in the supply chain.
  - h. An up to date list of company contacts and organization chart, upon request.
  - i. Procedures to ensure provision of critical services during a pandemic or other disaster.
2. The Business Continuity Plan shall be reviewed annually by the Subcontractor. The Subcontractor is required to submit the annual plan to Cenpatico within 10 days of the implementation of this Agreement and August 15<sup>th</sup> each year thereafter;
3. The Subcontractor is required to ensure all key staff will be trained and familiar with the plan;
4. The Subcontractor is required to prepare adequate Business Continuity Plans and review the plans annually, updating them as needed. The Subcontractor plans shall, at a minimum, address the factors in 6.16.1 as they apply to the management services subcontractors.

**ARTICLE VII**

**FINANCIAL CONSIDERATIONS**

- 7.1 **Cost Record Keeping System.** Subcontractor shall maintain a cost record keeping system.
- 7.2 **Payment Obligations.** The Subcontractor shall pay and perform all of its obligations and liabilities when and as due, provided, however, that if and to the extent there exists a bona fide dispute with any party to whom the Subcontractor may be obligated, the Subcontractor may contest any obligation so disputed until final determination by a court of competent jurisdiction; provided, however, that the Subcontractor shall not permit any judgment against it or any levy, attachment, or process against its property, the entry of any order or judgment of receivership, trusteeship, or conservatorship or the

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entry of any order to relief or similar order under laws, pertaining to bankruptcy, reorganization, or insolvency, in any of the foregoing cases to remain undischarged, or unstayed by good and sufficient bond, for more than fifteen (15) days.

- 7.3 **Availability of Funding.** Payments to be made by Cenpatico pursuant to this Agreement are conditioned upon the availability to Cenpatico of funds authorized for expenditure in the manner and for the purposes provided herein. No legal liability for any payment on the part of Cenpatico, its corporate parents, subsidiaries or affiliates, may arise under this Agreement until funds are made available by the State for performance of this Agreement. Cenpatico shall not be liable for any purchases, leases, agreements, or subcontracts entered into by the Subcontractor in anticipation of funding. Funds may not presently be available for performance under this Contract beyond the current State Fiscal Year. Moreover, should the State for any reason reduce the appropriations intended to apply to the performance of this Agreement for the current State Fiscal Year, Cenpatico may, at its sole election, take any of the following actions: (1) negotiate with Subcontractor for a reduced price or contract amount; or (2) terminate this Agreement or any of its Attachments in whole or in part
- 7.4 **Compensation.** Cenpatico shall compensate Subcontractor for the Covered Behavioral Health Services provided to Behavioral Health Participants in accordance with the terms of this Agreement. The method and amount of compensation and/or other consideration shall be provided in Exhibit B, "Method of Payment," to this Agreement, which may be amended or supplemented from time to time pursuant to the terms of this Agreement.
- 7.5 **Recoupment Rights.** Except as may otherwise be specifically provided in this Agreement, Cenpatico shall have the right to immediately recoup any and all amounts owed by Subcontractor to Cenpatico against amounts owed by Cenpatico to Subcontractor. This right shall include, without limitation, Cenpatico's right to recoup the following amounts owed to Cenpatico by Subcontractor: (i) amounts owed by Subcontractor due to overpayments or payments made in error by Cenpatico; (ii) amounts owed by Subcontractor in connection with any other prior, existing or future agreement between Subcontractor and Cenpatico or any Cenpatico affiliate; (iii) amounts owed by Subcontractor in relation to under-delivery of services or failure to provide encounter value equal to payment. As a material condition to Cenpatico's obligations under this Agreement, Subcontractor agrees that all recoupment and any offset rights pursuant to this Agreement shall be deemed to be and to constitute rights of recoupment authorized in State or federal law or in equity to the maximum extent possible under law or in equity and that such rights shall not be subject to any requirement of prior or other approval from any court or other government authority that may now have or hereafter have jurisdiction over Subcontractor. The Subcontractor shall comply with the protocols established in the AHCCS ACOM Manual 12-1 Recoupment Request Policy.
- 7.6 **Recoupment and Sanctions.** Any recoupments, sanctions, fines, etc. imposed by Cenpatico shall be either reimbursed to Cenpatico upon demand, or deducted from the Subcontractor's payment at the sole discretion of Cenpatico. This includes any recoupments, sanctions, fines, etc. imposed upon Cenpatico under its contract with ADHS/DBHS and passed through to the Subcontractor. Payment is due on demand as specified in the written notice. Subcontractor shall have the right to formally dispute a sanction imposed by Cenpatico as outlined in the ADHS/DBHS Provider Manual-Cenpatico Edition, Section 5.6.

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- 7.7 Right of Offset. Cenpatico shall be entitled to offset against any sums due the Subcontractor, any expenses or costs incurred by Cenpatico, or damages assessed by Cenpatico concerning the Subcontractor's non-conforming performance or failure to perform this Agreement, including expenses, costs and damages described in Exhibit C, Uniform Terms and Conditions.
- 7.8 Profit Corridor. Prevention Providers shall not retain profit from federal SAPT block grant funds.
- 7.9 Evergreen Contract Financial Considerations. In the event this Agreement is not amended before the close of the State Fiscal Year, the financial considerations as outlined in Exhibit B of the most recently executed contract will be extended indefinitely on a pro rata basis until the Managed Behavioral Health Care Agreement is amended or terminated in accordance with the terms of this Agreement. In the event the Evergreen contract financial considerations are in effect, the payment structure will be equivalent to 1/12<sup>th</sup> of the annual contract amount or the amount specified in the payment schedule identified in Exhibit B.
- 7.10 Financial Reporting and Viability Measures. Subcontractor shall meet the following financial viability standards, on a monthly basis. The Defensive Interval must be greater than or equal to fifteen (15) days. The Defensive Interval is calculated as follows:  $\text{Defensive Interval} = (\text{Cash} + \text{Cash Equivalents}) / ((\text{Operating Expense} - \text{Non Cash Expense}) / (\text{Period Being Measured in Days}))$ . The Current Ratio must be greater than or equal to 1.00. The Current Ratio is calculated as follows:  $\text{Current Ratio} = \text{Current Assets} / \text{Current Liabilities}$ .
- 7.11 Block Payment Requirements. Subcontractors paid on a block payment methodology as identified in Exhibit B shall meet the following requirements. The Subcontractor must successfully produce encounter value for services actually rendered that are equal or greater than to 100% of the prospective block payments. Cenpatico will reconcile payments to encounter data and may adjust, withhold, or recoup funding, based on performance against encounter value requirements. The Subcontractor's reimbursement shall not exceed the total cumulative maximum amount for the State Fiscal Year (July 1 to June 30) for the provision of covered services, as defined by ADHS/DBHS, as indicated. The Subcontractor agrees to manage the block payment allocations to ensure consistent provision of services throughout the term of this Agreement. Block payment service payments, as specified in Exhibit B, will be processed for payment on or about the 15<sup>th</sup> day of the month. All checks will be mailed via standard US mail. Cenpatico reserves the right to charge a special handling fee of \$30 per check mailed or delivered other than via standard US mail.

The Subcontractor acknowledges and agrees to accept the maximum payment specified and agrees to the terms of said payment arrangement. The Subcontractor may be subject to a withhold to be determined by Cenpatico, and at the discretion of Cenpatico when year-to-date prorated encounter value does not equal year-to-date contract value thresholds established by Cenpatico. All encounters will be applied to ADHS/DBHS prescribed Fund Types. Subcontractor shall be subject to recoupment for insufficient encounter value related to each individual Fund Type. Over delivery of encounter value in one Fund Type can not be used to offset under delivery in another Fund Type, except as allowed under statute. Any exceptions to this requirement shall be at the sole discretion of Cenpatico. Block Payment allocation includes the provision of all services covered under the Block Payment as defined in this Agreement and provided through any and all facilities operated by Subcontractor in Arizona, regardless of the location of the facilities. No additional dollars will be made available for services performed in facilities outside Cenpatico Geographic Service Areas.

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- 7.12 **Block Purchase Requirements.** Subcontractors paid on a block purchase methodology as identified in Exhibit B shall meet the following requirements. The Subcontractor must successfully produce encounters to support block purchase amount and reflect all services performed under the block purchase. Specific Block Purchased Crisis services as identified in Exhibit B do not require 100% encounter value submission. The Subcontractor's reimbursement shall not exceed the total cumulative maximum amount for the State Fiscal Year (July 1 to June 30) for the provision of Covered Services. The Subcontractor agrees to manage the block purchase allocations to ensure consistent availability and provision of services throughout the term of this Agreement. Block purchase service payment, as specified herein, will be processed for payment on about the 15<sup>th</sup> day of the month. All checks will be mailed via standard US mail. Cenpatico reserves the right to charge a special handling fee of \$30.00 per check mailed or delivered other than via standard US mail. Subcontractor acknowledges and agrees to accept the maximum payment specified and agrees to the terms of such payment arrangements.
- 7.13 **Third Party-Antitrust Violations.** The Subcontractor assigns to Cenpatico any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Subcontractor, toward fulfillment of this Agreement.

**ARTICLE VIII**

**NON PERFORMANCE PROVISIONS**

- 8.1 **Corrective Actions.** Subcontractor shall comply with corrective action when Cenpatico determines that Subcontractor has not fulfilled its obligations under this Agreement. The need for corrective action may be identified through various means, including but not limited to: grievance and appeals information; quality management; problem resolution; financial information; Administrative Reviews; failure to meet the MPS for any measure; a significant decrease in performance on any measure that cannot be justified; failure to demonstrate improvement toward meeting MPS; or information obtained in any other contract deliverable or investigation. Cenpatico shall give Subcontractor written notice through a Corrective Action Letter that an issue requiring corrective action has been identified and that a Corrective Action Plan is required. The Corrective Action Letter and the Corrective Action Plan shall be the means of communication between Cenpatico and the Subcontractor regarding resolution of the identified issue(s). The Corrective Action Letter will specify the corrective action(s) required to bring Subcontractor's performance into compliance with Agreement requirements on the identified issue(s), the documentation required to substantiate that the corrective actions have been completed, and the period of time during which the Subcontractor implement the required corrective action(s). If, at the end of the specified time period, Cenpatico determines that the Subcontractor has complied with the Corrective Action Letter requirements, Cenpatico will take no further action with respect to the imposition of sanctions. If, however, Cenpatico determines that the Subcontractor has not complied with the Corrective Action Letter requirements, Cenpatico may proceed with the imposition of sanctions.
- 8.2 **Performance Sanctions.** Cenpatico may impose financial sanctions for failure to comply with the terms of this Agreement, or requirements set forth in the documents incorporated by reference, or failure to comply with a Corrective Action Letter. Sanctions shall be assessed according to the severity of the violation. Cenpatico shall determine, at its sole discretion, the amount of the sanction.

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Subcontractor shall have the right to challenge sanctions pursuant the terms of this Agreement. Cenpatico shall provide a written notice of sanction to Subcontractor specifying the sanction, the grounds for the sanction, identification of any subcontracted providers involved in the violation, the amount of funds to be withheld from the Subcontractor's payments, and the steps necessary to avoid future sanctions. Subcontractor shall complete all steps necessary to correct the violation within the time frame established by Cenpatico in the notice of sanction to avoid additional penalties or corrective actions.

8.3 General Service Provision Sanctions. Unless explicitly stated otherwise in this Agreement or document incorporated by reference, at Cenpatico's discretion, all subcontractors are subject to the following sanctions:

1. Three thousand dollar (\$3,000.00) fine for failure to implement corrective action(s) by the specified due date, plus \$50.00 for each day beyond the date the corrective action was due and until such corrective action is implemented.
2. One hundred dollar (\$100.00) fine per person per day for an unexcused absence from a training or failure to send an alternate once enrollment has been approved.
3. Three thousand dollar (\$3000.00) fine for failure to respond to an Issue Resolution within the time frame specified by ABHS/DBHS.
4. Additional monthly penalties for failure to correct the violation within the timeframes established in the notice of sanction, which at Cenpatico's discretion, may be equal to or greater than the following: the original penalty amount multiplied by one (1) plus the number of additional months (or portion of a month) during which the violation continues. *(For example: If one month past the timeframe in the notice of sanction the Subcontractor has not corrected the violation(s), Cenpatico may imposed an additional penalty of the original penalty amount times two (one plus one month). If two months pass and the Subcontractor still has not corrected the violation(s), Cenpatico may impose yet another penalty of the original penalty amount times three (one plus two months).)*

8.4 Sanctions Imposed by State or Federal Authorities. If any state or federal authority imposes a sanction against Cenpatico, for any act or omission that Subcontractor was prohibited or required (respectively) to perform pursuant to this Agreement, Cenpatico may, in addition to any other remedies available under this Agreement, impose a sanction against Subcontractor in an amount equal to the amount of any such sanction imposed on Cenpatico. Cenpatico will not levy these sanctions upon Subcontractor until such time as the sanctioning authority actually imposes sanctions upon Cenpatico. If any such sanction applies to more than one subcontractor and the sanctioning authority does not delineate individual subcontractor responsibility, Cenpatico may apportion sanctions to Subcontractor based on an equitable method that accounts for the Subcontractor's share of responsibility. Any dispute regarding Subcontractor's liability for a sanction imposed under this Agreement shall be resolved through the Provider Payment Dispute process outlined Section 9.20 of this Agreement.

8.5 Performance Credit for Failure to Comply with Exhibit E. Subcontractor has agreed to the time frame for deliverables (the "Deliverables") as set forth in Exhibit E. In the event Subcontractor fails to provide the Deliverables in accordance with Exhibit E, Subcontractor shall be liable for a performance

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credit for such delay in the amount of \$1,500.00 per incident and \$50.00 per day for each day beyond the due date of the Deliverable and until Subcontractor provides the Deliverable to Cenpatico.

- 8.6 **Escalating Sanctions.** If Subcontractor violates the same provision in this Agreement, including any provision of an Attachment, on three (3) or more occasions within twelve (12) consecutive months, Cenpatico, at its sole discretion, may apply an automatic sanction of \$3,000.00 on the third (3<sup>rd</sup>) occurrence. For each violation after the third (3<sup>rd</sup>) occurrence, Cenpatico may double the sanction from the previous occurrence.
- 8.7 **Administration of Sanction Payments.** Any amounts due and owing to Cenpatico under this Article VIII may be offset by Cenpatico against any payments due Subcontractor under this Agreement from the next monthly payment until the full amount is paid. Subcontractor and Cenpatico each acknowledge that the payments described in this Article VIII constitute liquidated damages for the loss of a bargain, are not penalties, and are a reasonable approximation of Cenpatico's damages under the circumstances, as can best be determined as of the date hereof. Cenpatico shall have the right to impose such an offset even if Subcontractor contests the sanction; provided, however, that if the sanction is reduced or eliminated following a Provider Payment Dispute, Cenpatico shall pay any such sums within 30 days of the final resolution of the dispute process. Any sanction imposed by a State or federal authority and passed through to Subcontractor shall be reimbursed to Cenpatico upon demand, or, at Cenpatico's election, may be offset against any payments due to Subcontractor under this Agreement.
- 8.8 **Notice to Cure.** Cenpatico may issue a notice to cure for failure to remedy any non-performance or inadequate performance under this Agreement. The notice to cure shall stipulate the required response and timeframe required for the remedy. Failure to meet the requirements of the notice to cure may result in a notice of termination.
- 8.9 **Right to Assurance.** If Cenpatico in good faith has reason to believe that the Subcontractor does not intend to, or is unable to perform or continue performing under this Agreement, Cenpatico may demand in writing that the Subcontractor give a written assurance of intent to perform. Failure by the Subcontractor to provide written assurance within the number of Days specified in the demand may, at Cenpatico option, be the basis for terminating the Agreement, or other rights and remedies available by law or provided by the Agreement.
- 8.10 **Stop Work Order.** Cenpatico may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all or any part, of the work called for by this Agreement for period(s) of days indicated by Cenpatico after the order is delivered to the Subcontractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is cancelled or the period of the order or any extension expires, the Subcontractor shall resume work. Cenpatico shall make an equitable adjustment to the compensation in Exhibit B, and the Agreement shall be amended in writing accordingly.
- 8.11 **Non-exclusive Remedies.** The rights and the remedies of Cenpatico under this Agreement are not exclusive.

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- 8.12 Nonconforming Tender. Services supplied under this Agreement shall fully comply with the Agreement. The delivery of services or a portion of the services that do not fully comply constitutes a breach of contract. On delivery of nonconforming services, Cenpatico may terminate the Agreement for default under applicable termination clauses in the Agreement, exercise any of its rights and remedies under the Agreement, or pursue any other right or remedy available to it.

**ARTICLE IX**

**TERM, TERMINATION AND DISPUTE RESOLUTION**

- 9.1 Term and Voluntary Termination. This Agreement shall commence on the Effective Date and continue in effect until the following September 30<sup>th</sup> ("Initial Term"). On October 1<sup>st</sup> of each year, this Agreement and any Attachments will automatically renew for one (1) year periods ("Renewal Term"(s)), unless: (1) either party gives notice to the other of its intent not to renew this Agreement, or an Attachment individually, no fewer than sixty (60) days prior to the expiration of the Initial Term or any Renewal Term of this Agreement or such Attachment, as applicable; or (2) this Agreement or its Attachments are terminated pursuant to other provisions herein.
- 9.2 Elective Termination. Either party may elect to terminate this Agreement for any reason with ninety (90) days prior written notice, delivered by certified mail, to the other party.
- 9.3 Termination Upon Mutual Agreement. This Agreement may be terminated by mutual written agreement of the Parties effective upon the date specified in the written agreement. If the parties cannot reach agreement regarding an effective date for termination, Cenpatico will determine the effective date.
- 9.4 Cancellation for Conflict of Interest. Cenpatico may cancel this Agreement within three (3) years after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of Cenpatico is or becomes at any time while this Agreement or an extension of this Agreement is in effect an employee or a consultant to Subcontractor with respect to the subject matter of this Agreement. The cancellation shall be effective when the Subcontractor receives written notice of the cancellation unless the notice specifies a later time.
- 9.5 Termination for Improper Gratuities. Cenpatico may, by written notice, terminate this Agreement, in whole or in part, if Cenpatico determines that employment or a Gratuity was offered or made by the Subcontractor or a representative of the Subcontractor to any officer or employee of Cenpatico for the purpose of influencing the outcome of the securing this Agreement, an amendment to this Agreement, or favorable treatment concerning this Agreement, including the making of any determination or decision about contract performance. Cenpatico, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Subcontractor.
- 9.6 Termination for Suspension or Debarment. Cenpatico may, by written notice to the Subcontractor, immediately terminate this Agreement if Cenpatico determines that the Subcontractor has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement

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unit or other governmental body. Execution of this Agreement shall attest that the Subcontractor is not currently suspended or debarred. If the Subcontractor becomes suspended or debarred, the Subcontractor shall immediately notify Cenpatico.

- 9.7 **Termination for Convenience.** Cenpatico reserves the right to terminate this Agreement, in whole or in part at any time, at the sole discretion of Cenpatico when in the best interests of Cenpatico without penalty or recourse. Upon receipt of the written notice, the Subcontractor shall stop all work, as directed in the notice, and minimize all further costs to Cenpatico. In the event of termination under this paragraph, all documents, data and reports prepared by the Subcontractor under this Agreement shall become the property of and be delivered to Cenpatico upon demand. The Subcontractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.8 **Termination for Default.** In addition to the rights reserved in this Agreement, Cenpatico may terminate this Agreement in whole or in part due to the Subcontractor's failure to comply with any term or condition of the Agreement; to acquire and maintain all required insurance policies, bonds, licenses and permits; or to make satisfactory progress in performing the Agreement. Cenpatico shall provide written notice of the termination and the reasons for it to the Subcontractor. Upon termination under this paragraph, keep, documents, data, and reports prepared by the Subcontractor under this Agreement shall become the property of and copies be delivered to Cenpatico on demand. Cenpatico may, upon termination of this Agreement, purchase, on terms and in the manner that is deems appropriate, materials or services to replace those under this Agreement. The Subcontractor shall be liable to Cenpatico for any excess costs incurred by Cenpatico in purchasing materials or services in substitution for those due from the Subcontractor.
- 9.9 **Termination Due to Termination of ADHS/DBHS – Cenpatico Contract.** Subcontractor acknowledges that this Agreement is subject to automatic termination upon the expiration or termination of the ADHS/DBHS – Cenpatico Contract.
- 9.10 **Voidability of Agreement.** The Agreement is voidable and subject to immediate termination by Cenpatico upon the Subcontractor becoming insolvent or filing proceedings in bankruptcy or reorganization under the United States Code, or upon assignment or delegation of the Agreement without the prior written approval of Cenpatico.
- 9.11 **Termination Following Notice to Cure.**
1. **Notice to Cure.** Cenpatico reserves the right to cancel the whole or any part of this Agreement due to Subcontractor's failure to carry out any material obligation, term, or condition of this Agreement, following receipt of a written notice to cure any such failure. By way of example (but not limited to this list), Cenpatico shall issue a written notice to cure to Subcontractor for acting or failing to act as in any of the following:
    - a. Subcontractor fails to adequately perform the services set forth in this Agreement;
    - b. Subcontractor fails to complete the work required or to furnish the materials required within the time stipulated by this Agreement;
    - c. Subcontractor fails to make progress in the performance of the contract and/or gives

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Cenpatico reason to believe the Subcontractor will not or cannot perform to the requirements of the contract.

2. Response to Notice to Cure. Upon receipt of the written notice to cure, Subcontractor shall have ten (10) days to provide a satisfactory response to Cenpatico. Subcontractor's failure to adequately address all issues of concern may result in Cenpatico resorting to any single or combination of the following remedies:
  - a. Terminate the Agreement due to failure by the Subcontractor to carry out any material obligation, term or condition of the Agreement;
  - b. Reserve all rights or claims to damage for breach of any covenant of the Agreement; or
  - c. Perform any test or analysis on records, data, or materials for compliance with the specifications of the Agreement. If the result of any test confirms a material non-compliance with the specifications, any reasonable expense of testing shall be borne by the Subcontractor.

9.12 Immediate Termination by Cenpatico. Notwithstanding anything herein to the contrary, Cenpatico may immediately terminate this Agreement, in whole or in part, upon written notice to Subcontractor as follows:

1. If Subcontractor will lose, relinquish, or have materially affected any licensure or certification necessary to provide Covered Behavioral Health Services in the State, with such termination to be effective upon the effective date of such loss, relinquishment or material effect;
2. If Subcontractor or any of its agents or managing employees is convicted of a criminal offense related to that person's involvement in any program under Titles XVIII, XIX, XX, or XXI of the Social Security Act or has been terminated, suspended, barred, voluntarily withdrawn as part of a settlement agreement, or otherwise excluded in any program under Titles XVIII, XIX, XX or XXI of the Social Security Act;
3. In the event of: (i) imminent harm to patient health; (ii) an action by a State medical board, a medical or other licensing board, or a government agency that may impair Subcontractor's ability to provide Covered Behavioral Health Services; or (iii) Subcontractor's conviction of fraud or malfeasance;
4. If Subcontractor assigns or delegates this Agreement without Cenpatico's prior written approval; or
5. If Subcontractor breaches its warranty that it complies with all Federal and State immigration laws and regulations.

9.13 Rights and Obligations Upon Termination: In addition to the requirements stated in this Agreement, Subcontractor shall comply with the following provisions:

1. Upon issuing or receiving a notice of non-renewal or notice of termination, and until the effective date of such notice, Subcontractor shall perform work consistent with the requirements of this Agreement and in accordance with a written transition plan approved by Cenpatico for the orderly transition of eligible and enrolled persons to another Provider. The written transition plan will specify the timing of the transition of Behavioral Health Participants to another provider, as well

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as the reductions in Subcontractor's compensation that correlate to the reduced quantity of Behavioral Health Services that the Subcontractor provides as Behavioral Health Participants are transitioned to other Providers during the transition period.

2. Subcontractor shall be paid the Agreement price for all services and items completed as of the effective date of the notice of termination and shall be paid its reasonable and actual costs for work in progress as determined by GAAP; however, no such amount shall cause the sum of all amounts paid to Subcontractor to exceed the compensation limits set forth in the Agreement.
- 9.14 Transition Reporting and Tracking Requirements. The Subcontractor shall report and track all persons transitioned due to a contract, program or service change, suspension, limitation or termination to ensure service continuity. Required elements to be reported and tracked include: Name, Title XIX/XXI status, date of birth, population type, current services that the Behavioral Health Participant is receiving, services that the Behavioral Health Participant should be receiving, new agency involved, evidence that person has received written notification of the change, evidence of any terminations found or resulting from the transition, the date of first appointment and activities to re-engage persons. Other elements to be tracked may be added based on the particular circumstances.
- 9.15 Cenpatico's Rights Following Agreement Cancellation. If the Agreement is cancelled, Cenpatico reserves the right to purchase materials or to complete the required work. Cenpatico may recover any reasonable excess costs resulting from these actions from the Subcontractor by deduction from an unpaid balance and any other remedies as provided by law.
- 9.16 Cenpatico Right to Contract with an Alternate Subcontractor. In accordance with A.R.S. § 36-3412(D) and in addition to any other rights provided by law or under this Agreement, upon a determination by Cenpatico that Subcontractor has failed to perform any requirements of this Agreement that materially affect the health, safety or welfare of behavioral health participants, Cenpatico may, immediately upon written Notice to the Subcontractor, directly locate an alternative the Subcontractor for so long as necessary to ensure the uninterrupted care to behavioral health participants and to accomplish the orderly transition of behavioral health participants to a new or existing Subcontractor's, or until the Subcontractor corrects the Agreement performance failure to the satisfaction of Cenpatico.
- 9.17 Impact on Indemnification. In the event of expiration or termination or suspension of this Agreement by Cenpatico, the expiration or termination or suspension shall not affect the obligation of the Subcontractor to indemnify Cenpatico for any claim by any third party against Cenpatico or ADHS arising from the Subcontractor's performance of this Agreement and for which the Subcontractor would otherwise be liable under this Agreement.
- 9.18 Effect of Termination. If this Agreement expires or terminates pursuant to the provisions of Article IX, then this Agreement, along with all Attachments, shall terminate on the applicable expiration or termination date, subject certain obligations that survive the contract termination as expressly provided in this Agreement or as identified in the Survival section below.
- 9.19 Survival. The following provisions shall survive termination of this Agreement: Section 4.22 (Complaint, Grievance, and Appeal Processes); Section 5.1 (General Requirements and Indemnification); Section 6.1 (Records); Article VII (Financial Considerations); Section 9.17 (Transition

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Obligations); Section 9.20 (Provider Payment Disputes); Section 9.21 (Dispute Resolution), and Section 10.16 (Confidentiality of Information).

- 9.20 Provider Payment Disputes. Provider payment disputes and sanction disputes (collectively, "Provider Payment Disputes") shall be resolved through the process and procedures identified in Section 5.6 of the ADHS/DBHS Provider Manual-Cenpatico Edition for resolving provider claim disputes. . Subcontractor may appeal a Cenpatico decision regarding a Provider Payment Dispute in accordance with the ADHS/DBHS Provider Manual-Cenpatico Edition. Subcontractor shall carry out ADHS/DBHS, or Cenpatico decisions issued with respect to a Provider Payment Dispute.
- 9.21 Dispute Resolution. All Provider Payment Disputes shall be resolved through the applicable processes identified in the section above. In the event that any Party asserts that there exists any claim or controversy other than a Provider Payment Dispute that arises out of this Agreement or relating to the Parties' relationship under this Agreement, such party shall first send a written notice to the other party specifying the nature of the asserted dispute (the "Notice of Dispute") and requesting a meeting to attempt to resolve the dispute. The Notice of Dispute shall set forth the nature of the dispute in detail and shall identify any relevant documents which the party giving the Notice of Dispute knows of at that time. The Parties shall promptly meet and shall engage in good-faith efforts to resolve the dispute without the need to commence arbitration. If no such resolution is reached within thirty (30) days after delivery of the Notice of Dispute, any party to the dispute may thereafter commence arbitration in accordance with the Rules and Procedures for Arbitration of the American Arbitration Association ("AAA") relating to commercial arbitration disputes. Except for Provider Payment Disputes, which shall be resolved through the applicable administrative review process, arbitration proceedings shall be the sole and exclusive remedy for all disputes arising out of and relating to this Agreement. Notwithstanding the foregoing, all claims raised in a Notice of Dispute shall be deemed waived if arbitration is not initiated within one year of the date of the Notice of Dispute.

The Parties agree that any arbitration proceeding will be conducted at a location within the State designated by Cenpatico. The arbitration shall be before a single arbitrator who is mutually acceptable to the parties or, absent an agreement on an arbitrator, who is appointed by the AAA. The arbitrator shall have no right to award any punitive or exemplary damages or to vary or ignore the terms of this Agreement and shall be bound by controlling law. The prevailing party shall be entitled to recover from the losing party any costs related to the arbitration, including attorneys' fees and costs. The existence of a Notice of Dispute or arbitration proceeding shall not in and of itself constitute cause for termination of this Agreement. Notwithstanding any dispute arising under this Agreement, each party hereto shall continue to perform its obligations hereunder pending the decision of the arbitrator unless otherwise terminated pursuant to the termination provisions of this Agreement.

**ARTICLE X**

**MISCELLANEOUS**

- 10.1 Uniform Terms and Conditions Incorporated. The Uniform Terms and Conditions, contained in Exhibit C to this Agreement, are hereby incorporated into the terms of this Agreement, provided that all obligations imposed therein upon "Contractor" shall be construed as applying to Subcontractor for

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purposes of this Agreement. It is expressly agreed that the Uniform Terms and Conditions contained therein shall prevail over the terms of any other conflicting provision in this Agreement or any other document relating to or a part of this Agreement.

- 10.2 **Relationship of Parties.** The relationships among Subcontractor and Cenpatico are those of independent contractors. None of the provisions of this Agreement are intended to create, or to be construed as creating, any agency, partnership, joint venture, or employee-employer relationship. Notice to, or consent from, any third party, including Behavioral Health Participants, shall not be required to make any termination or modification of this Agreement effective.
- 10.3 **Use of Name.** The Parties acknowledge that each has a proprietary interest in its legal and business names. Neither party shall use the other's name without the prior written consent of the other party, provided that Cenpatico shall be permitted to use Subcontractor's name, business address, business telephone number, business facsimile number, licensure and a description of its services in Cenpatico Behavioral Health Participant information materials, including Subcontractor directories, as Cenpatico may reasonably deem as necessary to satisfy Cenpatico's obligations under the ADHS/DBHS Provider Manual-Cenpatico Edition and federal and State law.
- 10.4 **Lobbying.** Subcontractor shall not use funds paid to Subcontractor by Cenpatico, or interest earned, for the purpose of influencing or attempting to influence any officer or employee of the State or a Federal agency; or any member of, or employee of a member of, the United States Congress or the Arizona State Legislature in connection with awarding of any Federal or State contract, the making of any Federal or State grant, the making of any Federal or State loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal or State contract, grant, loan, or cooperative agreement.
- The Subcontractor shall not use funds paid to the Subcontractor by Cenpatico, or interest earned, for the purpose of influencing or attempting to influence any officer or employee of any State or Federal agency; or any member of, or employee of a member of, the United States Congress or the Arizona State Legislature in which it asserts authority to represent ADHS or advocate the official position of ADHS in any matter before a State or Federal agency; or any member of, or employee of a member of, the United States Congress or the Arizona State Legislature.
- 10.5 **Assignment; Delegation of Duties; Subcontracting.** This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto, their respective heirs, successors, and assigns Except as otherwise provided in this section, Subcontractor shall not subcontract or otherwise delegate its duties under this Agreement without the prior written consent of Cenpatico and any other parties as may be required by the Exhibit C, Uniform Terms and Conditions. Cenpatico allows Subcontractors to subcontract for transportation, transcription, and interpretation services only. Subcontractor shall establish a method to ensure the quality and competency of vendors of transportation, transcription and interpretation services. Subcontractor may not subcontract for any other service without special permission from Cenpatico. Subcontractor agrees that any subcontract or delegation of duties shall incorporate all applicable terms of this Agreement and Attachments as obligations of the Subcontractor's subcontractor or designee.
- 10.6 **Headings.** The headings of the various sections of this Agreement are inserted merely for the purpose of convenience and do not, expressly or by implication, limit, define, or extend the specific terms of the section so designated.

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- 10.7 **Order of Precedence.** In the event of any conflict between this Agreement and the ADHS/DBHS Provider Manual-Cenpatico Edition, this Agreement shall control, provided that in the event of any conflict between this Agreement and any Attachment hereto, the Attachment shall be controlling as to the subject matter described in that Attachment
- 10.8 **Third Party Beneficiary.** This is an agreement between Cenpatico and Subcontractor. Except as specifically provided in this Agreement, including, but not limited to, as provided herein with respect to the State, Cenpatico and Subcontractor do not intend to create in any third party any right to enforce this Agreement or to collect for losses or damages under this Agreement.
- 10.9 **Changes within the General Scope of the Agreement.** Cenpatico may, at any time, by written notice to Subcontractor, make changes within the general scope of this Agreement. If any change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Agreement, the Subcontractor shall assert its right to such adjustment within thirty (30) days from the date of receipt of the change notice. Any dispute or disagreement arising from the notice shall be treated as a contract claim and shall be settled in accordance with Section 9.21 of this Agreement. When Cenpatico issues an Amendment to modify this Agreement, and the Subcontractor does not assert a right to an adjustment in the Agreement compensation and/or other dispute or disagreement with Cenpatico's notice to Subcontractor, the provisions of the Amendment shall be deemed to have been accepted sixty (60) days after the date of mailing by Cenpatico, even if Subcontractor has not signed the Amendment. If the Subcontractor refuses to sign the Amendment, Cenpatico may exercise its remedies under this Agreement.
- 10.10 **Entire Agreement.** This Agreement, together with all Attachments and documents incorporated by reference, contains all the terms and conditions agreed upon by the Parties and supersedes all other agreements, oral or otherwise, of the Parties, regarding the subject matter of this Agreement.
- 10.11 **Severability.** The provisions of this Agreement are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Agreement.
- 10.12 **No Waiver.** Either party's failure to insist on strict performance of any term or condition of this Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
- 10.13 **Notices.** Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified mail, return receipt requested, postage prepaid or by recognized courier service, addressed as follows:

Cenpatico	Gila County Health Department
Attn: Terry Stevens, CEO	Attn: Michael A. Pastor, Chairman, Board of Supervisors
1501 W. Fountainhead Parkway Suite 295 Tempe, Arizona 85282	1400 Ash Street Globe, Arizona 85501

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or to such other address as either party may designate in writing, or as required by Exhibit C, Uniform Terms and Conditions.

- 10.14 **Contingency.** This Agreement shall be contingent upon the approval of its terms by any necessary governmental agency. This Agreement shall be deemed to be a binding letter of intent if Cenpatico has not received necessary regulatory approval as of the date of the execution of this Agreement.
- 10.15 **Force Majeure.** Except for the payment of sums due, neither party shall be liable or deemed to be in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. Force Majeure shall not include the following occurrences:
1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
  2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance this force majeure term and condition; or
  3. Inability of the Subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Agreement. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

- 10.16 **Confidentiality of Information.** The Parties acknowledge that each party may disclose confidential and proprietary information to the other in the course of performance of this Agreement. All information not otherwise publicly available which is jointly developed by the Parties pursuant to this Agreement or disclosed by one party to the other in the course of performance of this Agreement shall be deemed confidential and shall not be disclosed by the receiving party to any third party without the disclosing party's prior written consent.
- 10.17 **Calculation of Time.** The Parties agree that for purposes of calculating time under this Agreement, any time period of less than eleven (11) days shall be deemed to refer to business days unless and any time period of eleven (11) days or more shall be deemed to refer to calendar days.

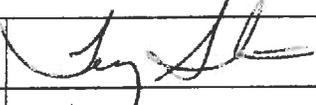
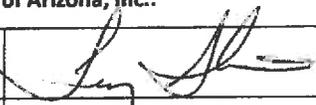
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- 10.18 **Offshore Performance of Work Prohibited.** Due to security and identity protection concerns, direct services under this Agreement shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve Cenpatico or the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for Cenpatico or the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of this Agreement. This provision applies to work performed by subcontractors at all tiers.
- 10.19 **Governing Law.** This Agreement will be deemed to have been executed and delivered in Arizona, and the laws of the State will govern the enforcement and interpretation of this Agreement excluding choice of law provisions that would apply the law of any other jurisdiction.
- 10.20 **No Parole Evidence.** This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 10.21 **Ownership of Intellectual Property.** Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this Agreement and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. ADHS/DBHS shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Subcontractor shall notify Cenpatico, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Subcontractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by Subcontractor or its subcontractor(s) to any entity not Cenpatico or the State without Cenpatico's express written authorization.
- 10.22 **Property of the State.** Any materials, including reports, computer programs and other deliverables, created under this Agreement are the sole property of the State. The Subcontractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Subcontractor shall not use or release these materials without Cenpatico's prior written consent.
- 10.23 **Authority.** The Parties whose signatures are set forth below represent and warrant that they have the ability, authority, skill, expertise and capacity to perform the services specified in this Agreement and that they are duly empowered to execute this Agreement.
- 10.24 **Certification of Truthfulness of Representation.** By signing this Agreement, the Subcontractor certifies that all representations set forth herein are true to the best of its knowledge.

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**THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION THAT MAY BE ENFORCED BY THE PARTIES.**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective on the first day or the fifteenth day of the month, whichever date immediately follows the date both Parties have signed this Agreement.

<b>Cenpatico Behavioral Health of Arizona, LLC:</b>		<b>Gila County Health Department</b>	
By:		By:	
Name:	Terry Stevens	Name:	Michael A. Pastor
Title:	CEO	Title:	Board of Supervisors
Date:	3/31/14	Date:	
		Tax ID:	86-6000444
<b>Cenpatico of Arizona, Inc.:</b>		<b>Gila County Health Department</b>	
By:		By:	
Name:	Terry Stevens	Name:	Bryan Chambers
Title:	President & CEO	Title:	Deputy Attorney Principal
Date:	3/31/14	Date:	