

CENPATICO
CENPATICO UNIFORM TERMS AND CONDITIONS
PREVENTION SERVICES AGREEMENT – EXHIBIT C
GILA COUNTY HEALTH DEPARTMENT
ORIGINATION DATE: 07/01/2010 REVISED: 12/01/2013

These Uniform Terms and Conditions apply to the Managed Health Services Subcontractor Agreement between Subcontractor and Cenpatico (collectively referred to herein as the “Parties”). As used herein, the term “Agreement” shall refer to the Managed Health Services Subcontractor Agreement and all Attachments thereto, including this Exhibit C.

ARTICLE I
SUBCONTRACTOR ADMINISTRATION AND OPERATION

- 1.1 Non-Discrimination in Employment.** Subcontractor is required to comply with State Executive Order No. 2009-09, which mandates that Subcontractor will not discriminate against any employee or applicant for employment because of disability, race, age, color, religion, sex or national origin. Subcontractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their disability, race, age, color, religion, sex or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subcontractor agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause. Subcontractor shall also comply with all other applicable federal and State laws, rules and regulations governing employment, including the ADA and Title VI.
- 1.2 Non-Discrimination Based on Health Status.** Subcontractor may not deny, limit, or condition the coverage or furnishing of benefits to Members on the basis of any factor that is related to health status, including, but not limited to the following: medical condition (including mental as well as physical illness); claims experience; receipt of health care; medical history; genetic information; evidence of insurability (including conditions arising out of acts of domestic violence); and mental or physical disability.
- 1.3 Co-location.** In the event Subcontractor seeks to co-locate on the same premises with one or more health providers, Subcontractor is required to enter into a formal written agreement with all entities seeking to co-locate. Subcontractor is required to provide Cenpatico with a copy of the co-located provider agreement within ten (10) business days after execution of the agreement. The agreement is required to 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.
- 1.4 Subcontractor Panel Maintenance.** Upon the execution of this Agreement: (i) Subcontractor shall maintain and provide to Cenpatico a list of Direct Care Staff, and shall update Cenpatico within ten (10) days in any change to the list of the Direct Care Staff by written notice, and (ii) Subcontractor shall furnish to Cenpatico the required provider information including, but not limited to, name, State license number, specialty, board status, NPI, and agency/hospital affiliation.
- 1.5 Registration.** Subcontractor is required to be registered with AHCCCS. Subcontractor and all of Subcontractor's eligible Direct Care Staff are required to apply for and maintain Medicare Enrollment and be enrolled as a Medicare Service Provider, unless Cenpatico grants Subcontractor an exception in writing. For the purposes of this provision, a "Medicare Service Provider" means a clinical provider that is a valid Medicare provider type and provides services that could be paid under Medicare. In addition, Subcontractor must obtain a unique NPI and submit all claims with such NPI. NPI numbers must be registered with AHCCCS.
- 1.6 Laboratory Services.** If Subcontractor performs laboratory testing, by signing the Agreement, Subcontractor certifies that it has complied with 42 CFR § 411.361 and has sent to Cenpatico copies of the information

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required by that rule to be sent to CMS. If Subcontractor performs laboratory services, Subcontractor further is required to meet all applicable State and federal requirements related to the provision of laboratory services, including but not limited to (i) have a Clinical Laboratory Improvement Amendment (CLIA) Licensure, CLIA Certificate of Waiver, or Certificate of Registration with a CLIA identification number, and (ii) meet all requirements of 42 CFR § 493, Subpart A. Subcontractors can only provide services that are consistent with their type of CLIA certification. If Subcontractor refers Members to an outside laboratory, Subcontractor must submit appropriate laboratory requisition forms to include all necessary demographic information, including diagnosis and Member's Client Information System (CIS) number. Laboratory services do not require prior authorization. Subcontractor is required to be liable for all laboratory services requested by Subcontractor that are not related to behavioral health diagnoses and are not reimbursable under the Member's medical health plan.

- 1.7 Health Insurance Portability and Accountability Act of 1996.** Subcontractor warrants that it is familiar with the requirements of HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009, and accompanying regulations and will comply with all applicable HIPAA requirements in the course of the Agreement. Subcontractor warrants that it will cooperate with Cenpatico in the course of performance of the Agreement so that both Cenpatico and Subcontractor will be in compliance with HIPAA, including cooperation and coordination with the Government Information Technology Agency (GITA), Statewide Information Security and Privacy Office (SISPO), Chief Privacy Officer, the Cenpatico Compliance Officer and HIPAA Coordinator, and other compliance officials required by HIPAA and its regulations. Subcontractor will sign any documents that are reasonably necessary to keep Cenpatico and Subcontractor in compliance with HIPAA, including, but not limited to business associate agreements.

If requested by Cenpatico, Subcontractor agrees to sign a "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 Subcontractor has attended or participated in job-related HIPAA training that is: (i) intended to make Subcontractor proficient in HIPAA for purposes of performing the services required and (ii) presented by a HIPAA Privacy Officer or other person or program knowledgeable and experienced in HIPAA and who has been approved by the GITA/SISPO Chief Privacy Officer and HIPAA Coordinator, or Cenpatico Compliance Officer.

Subcontractor further agrees to establish and maintain procedures and controls so that no information contained in its records or obtained from CMS or from others in carrying out the terms of the Agreement shall be used by or disclosed by Subcontractor, its agents, officers, or employees except as provided in said section 1106 of the Social Security Act and regulations prescribed thereunder.

- 1.8 Credentialing and Re-credentialing Criteria.** Subcontractor is required to comply with the processes for credentialing, re-credentialing, and/or training contained in the ADHS/DBHS Provider Manual-Cenpatico Edition.

1.9 Subcontractor's Representations and Warranties.

- a. **General Representations and Warranties.** Subcontractor represents and warrants that currently, and for the duration of the Agreement:
- 1) Subcontractor is and will remain in compliance with all applicable federal, State, and local laws and regulations (including but not limited to: Federal laws and regulations designed to prevent or ameliorate fraud, waste, and abuse, and those governing participation in the Medicare Advantage

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program (as applicable); applicable provisions of Federal criminal law; the False Claims Act (31 U.S.C. 3729 et. seq.); Title VI of the Civil Rights Act of 1964; the Age Discrimination Act of 1975; the Americans with Disabilities Act; the Rehabilitation Act of 1973; the federal health care program anti-kickback statute; and Medicare laws, regulations, and CMS instructions(as applicable));

- 2) The Subcontractor, as a condition for receiving payments and pursuant to the Deficit Reduction Act of 2005 (DRA), will establish and maintain written policies, provide education, and train employees about the following: Federal False Claims Act, 31 U.S.C. §§ 3729-3733 provisions; the administrative remedies for false claims and statements; any State laws relating to civil or criminal penalties for false claims and statements; and the whistleblower protections under such laws. All trainings must be conducted in such a manner that verification can be conducted by Cenpatico at any time;
- 3) Subcontractor is and will comply with all laws regarding tax obligations, safety, unemployment insurance, disability insurance and worker’s compensation insurance;
- 4) 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;
- 5) Subcontractor has and will maintain written policies that are implemented and enforced, that describe the duties of all persons or entities that Subcontractor employs or otherwise engages the services of for the provision of Covered Services to Members, and that are in accordance with statutory and/or regulatory requirements for licensure, delegation, supervision and collaboration, as appropriate; and
- 6) to the extent that Subcontractor executes a contract with any other person or entity that in any way relates to Subcontractor’s representations and warranties under this section, Subcontractor shall require that such other person or entity to provide these same representations and warranties.

b. **Level I Provider Representation and Warranty.** Any Subcontractor that is a Level I provider represents and warrants that Subcontractor is, and will remain for the duration of the Agreement, accredited by an appropriate accrediting body acceptable to Cenpatico.

c. **Notice Requirement.** In the event that, at any time, any of the above representations or warranties become untrue because of a material change in status of Subcontractor, Subcontractor is required to notify Cenpatico within ten (10) days of the date Subcontractor receives notice of the same. Without limiting the generality of the foregoing, Subcontractor is also required to notify Cenpatico of the following: (i) any situation which develops involving Subcontractor when notice of that situation must be given to any regulatory body with authority over Subcontractor; or (ii) 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.

1.10 Adherence to Supervision Requirements. Subcontractor is required to 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 (including, when applicable, Medicare laws, regulations, and CMS instructions).

1.11 Staffing Requirements. Subcontractor is required to have organizational, management, and administrative systems capable of meeting all Agreement requirements with clearly defined lines of responsibility, authority, communication, and coordination within and between departments, units, or functional areas of

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operation. 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 § 438 610(a) and (b); 42 CFR § 1001.1901(b); 42 CFR § 1003.102(a)(2)). Subcontractor is required to employ sufficient staffing and utilize appropriate resources to comply with the Agreement. 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 the Agreement requirements, including the requirement for providing culturally competent services. If Subcontractor does not achieve the desired outcomes or maintain compliance with the Agreement, Cenpatico may exercise its right to remedies under the Agreement. Subcontractor is required to participate in face-to-face meetings with Cenpatico for purposes of assessing Subcontractor compliance. Subcontractor is required to require all staff to have the training, education, experience, orientation, and credentialing, as applicable to perform assigned job duties.

1.12 Required Disclosures.

- a. Subcontractor is required to provide Cenpatico with written notice within one (1) business day from the date 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:
 - 1) 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 Services, including, but not limited to, Subcontractor's federal and/or State drug license;
 - 2) Subcontractor voluntarily surrenders or terminates any of Subcontractor's licenses, certifications, accreditations, or privileges in anticipation of an action described in the Agreement;
 - 3) Subcontractor is convicted of a fraud or felony or is suspended, debarred, excluded from participation in a federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)), excluded from participation in Medicare under sections 1128 or 1128A of the Act, or Subcontractor employs or contracts with an excluded individual or entity for the provision of health care, utilization review, medical social work, or administrative services;
 - 4) 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;
 - 5) Subcontractor fails to maintain the insurance coverage required under the Agreement;
 - 6) Any malpractice claim, lawsuit, judgment, or settlement in which Subcontractor is a named defendant;
 - 7) There is a change in Subcontractor's business address, tax identification number, AHCCCS registration, or scope of services, or Subcontractor experiences a merger, reorganization, or change in ownership or control;
 - 8) Subcontractor discovers, or is made aware, that an incident of suspected fraud or abuse has occurred. If so, Subcontractor is required to report the incident immediately by completing the confidential AHCCCS Referral for Preliminary Investigation form to AHCCCS, Office of the Director, Office of Program Integrity, and the ADHS Fraud and Abuse Unit. Incidents involving suspected

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Behavioral Health Member eligibility fraud should be reported to AHCCCS, Office of Program Integrity, Attn: Behavioral Health Member Fraud Unit;

- 9) Subcontractor becomes aware that Subcontractor or any director, officer, employee, or volunteer of Subcontractor is charged with a crime involving fraud, dishonesty, or abuse; or
 - 10) Any situation that arises that could reasonably be expected to affect Subcontractor's ability to carry out its obligations under the Agreement.
- b. Subcontractor shall not end a program or service, close a facility, or relocate a facility outside of the current zip code without first notifying Cenpatico of the anticipated change in writing. Subcontractor is required to provide Cenpatico at least ninety (90) days' notice prior to the anticipated effective date of the expected changes to allow Cenpatico time to review the requested change and renegotiate contract requirements when applicable. Subcontractor is required to provide notice within one day of any unexpected change. Ending a program or service, closing a facility, or relocating a facility outside of the current zip code without the written consent and prior approval of Cenpatico constitutes a material breach of the contract.

1.13 Quality Management, Medical Management, and Improvement. Subcontractor is required to comply with ADHS/DBHS and Cenpatico's quality management and medical management programs and with applicable provisions of the ADHS/DBHS Provider Manual-Cenpatico Edition, the ADHS/DBHS Bureau of Quality Management Operations Specification Manual, the ADHS/DBHS Utilization Management/Medical Management (UM/MM) Plan and Work Plan, the ADHS/DBHS Quality Management (QM) Plan and Work Plan, the ADHS/DBHS Policies and Procedures Manual, and the AHCCCS Medical Policy Manual, as well as with 42 CFR Parts 441 and 456 and all applicable federal and AHCCCS quality management requirements. Cenpatico will actively monitor Subcontractor's compliance with this provision, and Cenpatico shall impose corrective actions on Subcontractor if Subcontractor does not show demonstrable and sustained improvement toward meeting ADHS-established or ADHS-approved minimum performance standards. Subcontractor is required to meet the ADHS/DBHS Minimum Performance Standards (MPS) and Goals for services delivered to Title XIX/XXI Adult and Child Members as set forth in Exhibit A. Cenpatico may impose corrective action, financial sanctions, notice to cure, or other remedies on Subcontractor if: (i) Subcontractor does not achieve and sustain the minimum performance standards for any indicator; (ii) Subcontractor's performance for any indicator declines to a level below the ADHS-established or approved minimum performance standard; or (iii) there is a statistically significant drop in Subcontractor's performance on any indicator without a justifiable explanation. Subcontractor shall, participate in, cooperate with, and where applicable, implement, ADHS quality improvement activities. Subcontractor is required to follow a FOCUS - PDSA (Plan Do Study Act) model of continuous quality improvement to identify and resolve systems issues.

1.14 Trending of Incidents, Accidents, and Deaths Report. Subcontractor is required to report incidents, accidents, and deaths in accordance with the ADHS/DBHS Provider Manual-Cenpatico Edition.

1.15 Marketing Restrictions

- a. Subcontractor shall not use for marketing:
 - 1) Incentive items except for use in connection with outreach activities, subject to Cenpatico's prior approval;
 - 2) Solicitation of any individual face-to-face, door-to-door, or over the telephone;
 - 3) Provision of promotional materials, incentives, or any other activity to influence enrollment in

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conjunction with the sale or offering of any private insurance;

- 4) Television advertising;
- 5) Direct mail advertising;
- 6) Marketing of non-covered services;
- 7) Utilization of the word “free” in reference to Covered Services;
- 8) Listing of providers in marketing and open enrollment materials who do not have signed agreements with Cenpatico;
- 9) Use of the Cenpatico, ADHS or AHCCCS logo unless approved by Cenpatico;
- 10) Inaccurate, misleading, confusing, or negative information about Cenpatico, AHCCCS, and ADHS, and any information that may defraud Members or the public; and
- 11) Discriminatory marketing practices prohibited by law.

- b. Subcontractor is required to review and revise all outreach and marketing materials on an annual basis to reflect current practices.

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

1.17 Mergers, Reorganization, Changes in Ownership or Control, and Other Disclosures

- a. **Prior Approval.** Subcontractor is required to obtain prior approval of Cenpatico and sign a written amendment to the Agreement for any merger, reorganization, or change in ownership of Subcontractor. Subcontractor is required to submit a detailed merger, reorganization, and/or transition plan to Cenpatico for review and include strategies to ensure uninterrupted services to Members eligible to receive services, ensure that services are not diminished, and that major components of Subcontractor’s organization and programs relevant to the Agreement are not adversely affected by the merger, reorganization, or change in ownership.
- b. **Disclosure of Ownership and Control** [42 CFR 455.104]. The Subcontractor must provide the following information to Cenpatico upon request and at any of the following times: upon the Subcontractor executing this Agreement with Cenpatico; upon renewal or extension of this Agreement; or within 35 days after any change in ownership of the Subcontractor:
 - 1) The name and address of any person (individual or corporation) with an ownership or control interest in the Subcontractor (the address for corporate entities must include as applicable primary business address every business location, and P.O. Box address); the date of birth and Social Security Numbers of any person with an ownership or control interest in the subcontractor; and the tax identification number of any corporation with an ownership or control interest in the Subcontractor.
 - 2) Whether any person (individual or corporation) with an ownership or control interest in the Subcontractor is related to another person with ownership or control interest in the Subcontractor as a spouse, parent, child, or sibling; or whether any person (individual or corporation) with an ownership or control interest in any subcontractor of the Subcontractor has a 5% or more interest is related to another person with ownership or control interest in the Subcontractor as a spouse,

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parent, child, or sibling;

- 3) The name of any other disclosing entity as defined in 42 CFR 455.101 in which an owner of the Subcontractor has an ownership or control interest; and
 - 4) The name, address, date of birth and Social Security Number of any managing employee of the Subcontractor as defined in 42 CFR 455.101.
- c. **Disclosure of Information on Persons Convicted of Crimes** [42 CFR 455.101, 106, and 436]. The Subcontractor must identify all persons associated with the Subcontractor and its fiscal agents who have and ownership or control interest or managing employee interest and determine if they have been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or the Title XX services program. The Subcontractor shall, on a monthly basis, confirm the identity and determine the exclusion status through routine checks of: The List of Excluded Individuals (LEIE); the System for Award Management (SAM) formerly known as The Excluded Parties List (EPLS); and any other databases directed by AHCCCS or CMS. The Subcontractor must immediately notify AHCCCS, DBHS, and Cenpatico of any person who has been excluded through these checks. The results of the *Disclosure of Information on Persons Convicted of Crimes* shall be held by the Subcontractor. Upon request, the Subcontractor shall provide AHCCCS, DBHS, and/or Cenpatico with the above-listed information. On an annual basis, the Subcontractor shall submit to the Cenpatico Disclosure of Information of Persons Convicted of a Crime form (included in the ADHS/DBHS Provider Manual- Cenpatico Edition), attesting that the above-listed information has been requested and obtained. Refer to Attachment E Chart of Deliverables for further information.
- d. **Disclosure of Information Related to Business Transactions** [42 CFR 455.105]. The Subcontractor is required to furnish to Cenpatico, ADHS, AHCCCS, and CMS within thirty-five (35) days of receiving a request, full and complete information, pertaining to the following business transactions:
- 1) The ownership of any subcontractor with whom the Subcontractor has had business transactions totaling more than \$25,000 during the twelve (12) month period ending on the date of such request; and
 - 2) Any significant business transactions between the Subcontractor and wholly owned supplier, or between the Subcontractor and their subcontractor during the 5-year period ending on the date of such request.

1.18 Notification of Service Level Changes.

- a. Subcontractor is required to notify and obtain written approval from Cenpatico before making any material changes in the size, scope, or configuration of Subcontractor's services.
- b. Subcontractor is required to notify Cenpatico in writing within one (1) day of knowledge of or anticipation of any unexpected material change or deficiency; any material change to Subcontractor's license, certification or registration; or any condition which terminates, suspends or limits Subcontractor from effectively participating in the network, including the necessity for transition of Members to a different provider. The notice is required to include information on:
 - 1) How the change, deficiency, or condition affects service delivery;
 - 2) Subcontractor's plan to minimize disruption to Member care, service delivery, and for consultation with Member treatment teams to discuss the available alternative service delivery options and to revise treatment plans to address changes in services or service providers;

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- 3) The number of Title XIX/XXI and Non-Title XIX/XXI Members affected by the change, deficiency or condition in each program category; and
- 4) Subcontractor's plan to communicate the change, deficiency, or condition to Members and stakeholders.
- c. Upon Cenpatico's request, submit a written plan to transition Members affected by the change, deficiency, or condition to a different provider and to address a network change, deficiency, or condition to restore the network to full capacity.
- d. Subcontractor is required to document all activities for each Member transitioned to a different provider. Documentation is required to include: Name, Title XIX/XXI eligibility status, SMI eligibility status, date of birth, program category, description of all services the Member receives or will receive, the name of the new provider, date and method of Member notification, service disruption or termination found or resulting from the transition, the date of first appointment, and re-engagement activities provided to Members who miss their first appointment with the new provider.
- e. Subcontractor is required to fully cooperate with Cenpatico to effectively transition Members to a new provider, track and document all engagement and coordination activities, provide copies of clinical records to new providers, and provide timely responses to Cenpatico's request for information or updates.

1.19 Anti-Kickback Certification of Compliance. By signing the Agreement, 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 therefrom. Except for payment for Subcontractor's performance under the terms of the Agreement, Subcontractor or any director, officer, agent, employee or volunteer of 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 Subcontractor as consideration for or to induce either Cenpatico or Subcontractor to enter into a contract, or for any referrals of enrolled persons to Subcontractor for the provision of Covered Services.

1.20 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 the Agreement impossible or impracticable, Cenpatico shall have the following rights:

- a. After the official declaration of a pandemic, Cenpatico may temporarily void the Agreement in whole or specific sections, if Subcontractor cannot perform to the standards agreed upon in the initial terms;
- b. Cenpatico shall not incur any liability if a pandemic is declared and emergency procurements are authorized by the Director as per A.R.S. 41-2537 of the Arizona Procurement Code;
- c. Once the pandemic is officially declared over and/or Subcontractor can demonstrate the ability to perform, Cenpatico, at its sole discretion, may reinstate the temporarily voided Agreement.

1.21 Declaration of Emergency. Upon a declaration by the Governor that an emergency situation exists in the delivery of behavioral or other 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.

1.22 Conflict of Interest. Subcontractor shall not undertake any work that represents a potential or existing conflict of interest regarding the performance of the Agreement, or which is not in the best interest of

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Cenpatico, ADHS/DBHS, or the State without prior written approval by Cenpatico. Subcontractor is required to fully and completely disclose to Cenpatico a potential or existing conflict of interest. If Subcontractor discovers a conflict of interest and does not immediately notify Cenpatico and discontinue any related activities or relationships, Cenpatico may consider Subcontractor to be in breach of the Agreement. If, as a result of a conflict of interest, Cenpatico or ADHS incurs a financial loss to a State or federal program or Subcontractor realizes an inappropriate financial gain to its organization, an employee, or subcontractor, such loss or gain shall be considered an overpayment subject to recoupment by Cenpatico. In addition to exercising its remedies under the Agreement, Cenpatico may refer Subcontractor's conflict of interest activities to ADHS/DBHS and/or the appropriate law enforcement agency as suspected fraud or program abuse.

- 1.23 Medicare Modernization Act Requirements.** Subcontractor is required to comply with the Medicare Modernization Act of 2003 (MMA) for Medicare Part D, prescription drug benefit.
- 1.24 Social Networking and Broadcast Activities.** Subcontractor shall adhere to the requirements for Social Networking and Broadcast activities as described in ACOM Policy 425 as well as any Cenpatico social networking policy. Cenpatico will monitor Subcontractor's compliance with this requirement, and Subcontractor must cooperate with Cenpatico and provide all information requested by Cenpatico in carrying out this monitoring.
- 1.25 Ownership of Work Product.** Any and all intellectual property, including but not limited to Deliverables, copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of the Agreement (Work Product) shall be work made for hire and the State shall be considered the creator of such Work Product. ADHS/DBHS shall own (for and on behalf of the State) the entire right, title, and interest to the Work Product throughout the world. Subcontractor shall notify Cenpatico, within twenty (20) days, of the creation of any Work Product by it. Subcontractor agrees to execute any and all document(s) necessary to assure ownership of the Work Product vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Work Product in any entity other than the State. The Work Product shall not be disclosed by Subcontractor to any entity other than Cenpatico or the State without Cenpatico's express written authorization.
- 1.26 Offshore Performance of Work Prohibited.** Any services described in the Agreement that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in this Agreement, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services, or services that are incidental to the performance of the Agreement. This provision applies to work performed by subcontractors at all tiers.

ARTICLE II
SUBCONTRACTOR'S SERVICE PROVISION OBLIGATIONS

- 2.1 Provision of Covered Services.** Subcontractor agrees to provide, or arrange for the provision of, the Covered Services described in the Agreement (including Exhibit A and all other exhibits) to Members. In providing Covered Services, Subcontractor agrees to comply with ADHS/DBHS's definition of medically necessary services. If Subcontractor is Direct Care Staff, it agrees to operate only within the scope of its professional practice and training. The population of Members to be served by Subcontractor, and Subcontractor's Member capacity, shall be as provided in Exhibit A, "Scope of Work." The amount, duration and scope of Covered Services to be provided by Subcontractor pursuant to the Agreement shall also be as provided in

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Exhibit A, "Scope of Work." Subcontractor is required to provide Covered 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 health community in which Subcontractor is located. Subcontractor acknowledges and agrees that services provided to Members which do not constitute Covered Services or which are provided in a manner inconsistent with the Agreement or the ADHS/DBHS Provider Manual-Cenpatico Edition, shall not be eligible for payment under the Agreement. Subcontractor is required to ensure that Covered Services are available to all Members, as needed, to ensure the safety and well-being of all Members under Subcontractor's care twenty-four (24) hours per day, seven (7) days per week. Subcontractor is required to ensure the availability of Professionals to provide telephonic assistance to Members during non-business hours. This availability should be delivered by Subcontractor and be in addition to the crisis services offered by Cenpatico or its designee.

- 2.2 Acceptance of New or Existing Members.** Subcontractor is required to accept any new Member who is eligible to be enrolled or any Member enrolled with Cenpatico. AHCCCS is responsible for enrollment, re-enrollment and disenrollment of Medicaid eligible members and non-Medicaid eligible members. Members have open access and can self-refer to any Participating Health Care Subcontractor contracted to provide intake services. Subcontractor may provide factual information, but Subcontractor is prohibited from recommending or influencing a Member's selection of a provider. When a Member requests to access Covered Services, there shall be no wrong door. Cenpatico and Subcontractor are required to respond when a Member requests Covered Services and follow through to ensure the Member receives appropriate services. Subcontractor is required to assist any Member with obtaining Covered Services for which the Member is eligible, from the Participating Health Care Subcontractors best-suited to deliver effective services to Member. Subcontractor is required to not arbitrarily or prematurely deny, suspend, or terminate services to a Member without Cenpatico's prior approval.
- 2.3 Subcontractor Serves as Agent of the State and A.R.S. §1-502.** Subcontractor understands Subcontractor provides services as an agent of the State; and as such, is required to ensure compliance with A.R.S. §1-502. A.R.S. §1-502 requires each person applying or receiving a public benefit to provide documented proof which demonstrates a lawful presence in the United States. Subcontractor understands that Cenpatico or the State shall reserve the right to conduct unscheduled, periodic process and documentation audits to ensure Subcontractor compliance. All available contract remedies, up to and including termination may be taken for failure to comply with A.R.S. §1-502 in the delivery of services under this agreement
- 2.4 Determination of Member Eligibility.** Subcontractor is required to determine, in accordance with the procedures specified in the ADHS/DBHS Provider Manual-Cenpatico Edition, whether a person seeking Covered Services is a Member eligible for such services. If Cenpatico subsequently determines that such person was not eligible at the time the services were rendered, Cenpatico shall not be responsible for payment of such services.
- 2.5 Referrals.** Subcontractor is required to comply with all applicable provisions of the ADHS/DBHS Provider Manual-Cenpatico Edition for the making and acceptance of referrals for Covered Services. Subcontractor is required to accept all Member referrals made by Cenpatico. Subcontractor is required to make referrals of Members for Covered Services only to other Participating Health Care Subcontractors, except: (i) as the need for Emergency 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 Services upon referral, Subcontractor is required to make a report, in accordance with the requirements of the ADHS/DBHS Provider Manual-Cenpatico Edition, to the Member's PCP.
- 2.6 Emergency Services.** In a health emergency, Subcontractor is required to verify eligibility for Covered

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Services in accordance with the ADHS/DBHS Provider Manual-Cenpatico Edition and with federal, State, and local laws relating to the provision of Emergency Services, provided that nothing in this provision shall be deemed to require Subcontractor to violate federal or State law regarding the provision of Emergency Services. Subcontractor is required to notify Cenpatico within twenty-four (24) hours or by the next business day of rendering or learning of the rendering of Emergency Services to a Member.

- 2.7 Special Assistance for Persons with Serious Mental Illness.** Subcontractor is required to notify Cenpatico, the ADHS/DBHS Office of Human Rights, and the appropriate Human Rights Committee of all individuals deemed to be in need of special assistance in accordance with the ADHS/DBHS Provider Manual - Cenpatico Edition. Subcontractor is required to also ensure that its staff has the necessary skill and knowledge to identify and refer all persons in need of special assistance.
- 2.8 Age of Majority.** Subcontractor is required to ensure that Members reaching the age of majority are provided continuity of care without service disruptions or mandatory changes in service providers. Subcontractor is required to also allow enrolled children and enrolled parents to receive services from the same provider, if requested.
- 2.9 Cultural and Linguistic Needs.** Subcontractor is required to conduct an assessment of the service area's cultural and linguistic needs, and deliver culturally appropriate services in conformance with ADHS/DBHS Cultural Competency Plan and Cenpatico's Cultural Competency Plan.
- 2.10 Discharge Planning.** Subcontractor, in conjunction with Cenpatico's utilization management staff, as appropriate, and in compliance with the ADHS/DBHS Provider Manual-Cenpatico Edition, will utilize a system for the coordinated discharge planning of Members, including the planning of such continuing care as may be necessary. Subcontractor is required to also comply with the applicable discharge planning requirements outlined in the ADHS/DBHS Provider Manual-Cenpatico Edition.
- 2.11 Preferred Drug List/Drug Formulary.** Subcontractor is required to abide by Cenpatico's formulary, medication lists, or preferred drug lists as applicable when prescribing medications for Members in accordance with the ADHS/DBHS Provider Manual-Cenpatico Edition. Subcontractor is required to adhere to the requirements of the AHCCCS/ADHS Psychotropic Medication Initiative in accordance with the ADHS/DBHS Provider Manual-Cenpatico Edition.
- 2.12 Direction of Care.** Subcontractor will be responsible for directing its provision of Covered Services to a Member. Subcontractor understands that Cenpatico's determinations, if any, to deny payments for services which Cenpatico does not deem to constitute Covered Services, or which were not provided in accordance with the policies and procedures set forth in the Agreement (and all Attachments) and the ADHS/DBHS Provider Manual-Cenpatico Edition, are administrative decisions only, and that such a denial shall not absolve Subcontractor of its responsibility to exercise its independent judgment in the provision of appropriate Covered Services to Members
- 2.13 Utilization Management.** Subcontractor is required to conduct utilization management activities in compliance with Cenpatico's utilization management plan, the ADHS/DBHS Provider Manual-Cenpatico Edition, Chapter 1000 of the AHCCCS Medical Policy Manual, the ADHS/DBHS Quality Management Utilization Management Plan, the ADHS/DBHS Policies and Procedures Manual, and federal and State laws and regulations. Cenpatico shall actively monitor Subcontractor's compliance with this provision.
- 2.14 Prior Authorization.** Subcontractor will comply with ADHS/DBHS and Cenpatico's prior authorization policies, procedures, protocols, and requirements, including, but not limited to, the prior authorization processes outlined in the ADHS/DBHS Provider Manual-Cenpatico Edition. Cenpatico will not require Prior Authorization for most services. Cenpatico shall not require Prior Authorization for Emergency Services,

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although Cenpatico may conduct a retrospective review of such services after the Member's immediate needs have been met.

- 2.15 Licensed Hospital (formerly Level I), Behavioral Health Hospital Facility (formerly Level I Sub-Acute), Behavioral Health Inpatient Facility (formerly Level I RTC), Behavioral Health Residential Facility (formerly Level II and III), Behavioral Health Supportive Home (formerly Adult TFC), and HCTC Authorization Requirements.** Any Licensed Hospital, Behavioral Health Hospital Facility, Behavioral Health Inpatient Facility, Behavioral Health Residential Facility, or HCTC service requires prior authorization, unless authorization requirements are specifically waived in Exhibit B. Licensed Hospital, Behavioral Health Hospital Facility, Behavioral Health Inpatient Facility, Behavioral Health Residential Facility, and HCTC services not authorized in advance may be denied for no authorization. Emergency admissions to Level I Psychiatric facilities will be retrospectively reviewed and approved based on medical necessity criteria. Service authorizations shall not be a guarantee of payment to Subcontractor.
- 2.16 Compliance With Inpatient Quality Management and Utilization Control Procedures.** Any Subcontractor who is a Licensed Hospital (formerly Level I), or Behavioral Health Hospital Facility (formerly Level I Sub-Acute), or Behavioral Health Inpatient Facility (formerly Level I RTC) provider is required to comply with ADHS/DBHS's and Cenpatico's quality management and medical management programs in conformance with 42 CFR, Parts 441 and 456 (as applicable), and the AHCCCS Medical and Policy Manual.
- 2.17 Behavioral Health Residential Facility Providers Serving Juveniles.** Any Subcontractor who is a Behavioral Health Residential Facility provider serving juveniles is required to comply with all relevant provisions in A.R.S. § 36-1201.
- 2.18 Advance Directives.** Subcontractor is required to comply with the applicable provisions of the ADHS/DBHS Provider Manual-Cenpatico Edition with respect to Advance Directives. Subcontractor is required to provide written information regarding Advance Directives to adult Members at the time a service is first delivered and periodically thereafter of the right to execute an Advance Directive. When an adult Member is incapacitated or unable to receive or understand information, Subcontractor must provide written information regarding Advance Directives to the adult Member's family member, designated representative, or personal representative. The information shall include: a Member's rights regarding Advance Directives under Arizona law, including a description of the applicable law; policies and procedures governing the implementation of those rights; and the Member's right to file a complaint. Subcontractor is required to provide the Member with a clear and precise written statement if Subcontractor cannot implement an Advance Directive as a matter of conscience. This statement, at a minimum should: clarify institution-wide objections and those of individual physicians, identify Arizona legal authority permitting the objection, and describe the range of medical conditions or procedures affected by the objection. Subcontractor must assist adult Members that express an interest in developing and executing an Advance Directive. Subcontractor is required to also do the following: document in the adult Member's medical record that the information described above was provided and whether an Advance Directive was executed; not make provision of services conditional upon execution of an Advance Directive; not discriminate against an adult Member because of a decision to execute or not execute an Advance Directive; provide a copy of an adult Member's executed Advance Directive, or documentation of refusal, to the Member and the Member's PCP for inclusion in the adult Member's medical record maintained by the PCP; and maintain a copy of the adult Member's Advance Directives or documentation of refusal to sign an Advance Directive in a prominent part of the adult Member's behavioral health medical record.
- 2.19 Contact with PCPs.** Subcontractor is required to identify when a Member does not have a PCP and encourage and assist the Member to engage in primary care. Subcontractor is required to, within a

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reasonable time (which in any event will not exceed one (1) week) following consultation with, or testing of, a Member, make a complete written report to the Member's PCP, provided that, with respect to findings which may indicate a need for immediate or urgent follow-up treatment or testing or which may indicate a need for further or follow-up care outside the scope of the referral authorization or outside the scope of Subcontractor's area of expertise, the Subcontractor is required to provide an oral report to the Member's PCP within twenty-four (24) hours of Subcontractor's consultation or Subcontractor's receipt of the report of the testing, as applicable. Subcontractor is required to demonstrate reasonable effort to maintain routine contact with AHCCCS Health Plan PCPs as set forth in the ADHS/DBHS Provider Manual-Cenpatico Edition, and ensure that any information-sharing between Subcontractor and PCP is conducted in accordance with applicable regulations concerning confidentiality and sharing of health information. Cenpatico shall monitor Subcontractor's compliance with this requirement.

- 2.20 Member Communications.** Subcontractor is required to freely communicate with Members about their treatment, regardless of benefit coverage limitations. Nothing in the Agreement shall be deemed or construed to restrict or inhibit Subcontractor in any way from communicating freely with or advocating for Members regarding: (i) the Member's health status, medical care, and treatment options, including any alternate treatment that may be self-administered; (ii) any information the Member needs in order to decide among all relevant treatment options; (iii) the risks, benefits, and consequences of treatment or non-treatment; and (iv) the Member's right to participate in decisions regarding his or her health care, including the right to refuse treatment, and to express preferences about future treatment decisions. Subcontractor shall document in the Member's medical record all communications related to these topics.
- 2.21 Member Rights and Responsibilities.** Subcontractor is required to fully inform Members and their family members about their rights and responsibilities and how to exercise them, as defined in the ADHS/DBHS Provider Manual-Cenpatico Edition. Subcontractor is required to comply with any applicable federal and State requirements that relate to Member rights and take those rights into account when delivering Covered Services to Members and their families. A signed copy demonstrating receipt and review of Member rights and responsibilities shall be updated at least annually and maintained in the Member's file.
- 2.22 Assisting Members in Understanding Their Right to File Grievances and Appeals.** Subcontractor is required to assist eligible and enrolled Members in understanding their right to file grievances and appeals in conformance with the ADHS/DBHS Provider Manual-Cenpatico Edition.
- 2.23 Member Complaint, Grievance, and Appeal Processes.** Subcontractor is required to comply with Cenpatico's Member complaint, SMI Grievance, and Member appeal processes, as set forth in the ADHS/DBHS Provider Manual-Cenpatico Edition. Subcontractor agrees that all communications, records, and documents relating to benefit determinations as well as Member complaints, grievances, and appeals are required to be referred to Cenpatico in accordance with said complaint, grievance, and appeals processes. Subcontractor is required to carry out in a timely manner the ADHS/DBHS, AHCCCS, or Cenpatico decisions issued with respect to any Member complaint, SMI Grievance, or Member appeal.
- a. **Member Complaints:** All Member complaints shall be resolved according to the ADHS/DBHS Provider Manual-Cenpatico Edition. Subcontractor is required to respond to and resolve complaints in a courteous, responsive, effective, and timely manner. Subcontractor shall not engage in conduct to prohibit, discourage, or interfere with a Member's right to assert a complaint, appeal, SMI grievance, claim dispute, or use any grievance system process.
 - b. **SMI Grievances and Member Appeals:** All SMI grievances and Member appeals shall be resolved according to the A.A.C. Title 9, Chapter 21, Article 4; and the ADHS/DBHS Provider Manual-Cenpatico Edition.

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- 2.24 Cooperation with Other Subcontractors, Contractors, and State Employees.** Subcontractor is required to cooperate fully with Cenpatico, other ADHS contractors, and/or State employees in scheduling and coordinating services. Subcontractor is required to afford other providers reasonable opportunity to provide services and shall not commit or permit any act that interferes with the performance of services by other providers or by Cenpatico or State employees. This includes, but is not limited to, allowing HIV intervention providers into Subcontractor’s facilities to give presentations about HIV and HIV testing. Subcontractor is required to ensure appropriate exchange of clinical information among all other subcontractors, contractors, and Cenpatico and State employees to facilitate coordination of care, including service plans, comprehensive assessments, and progress reports.
- 2.25 Dissemination of Information.** Subcontractor is required to, upon request, assist Cenpatico in the dissemination of information prepared by Cenpatico, ADHS/DBHS, AHCCCS, or any other governmental agency, to its Members and pay for the cost to disseminate and communicate information. Subcontractor is required to ensure that all advertisements, publications, printed materials, and social marketing materials that Subcontractor produces and that refer to Covered Services for Title XIX/XXI Members state that “Contract services are funded, in part, under contract with the State of Arizona.”
- 2.26 Adherence to ADHS/DBHS Requirements for Appropriate Treatment of Substance Abuse.** Subcontractor is required to assess or shall arrange for the assessment of Members for co-occurring substance abuse disorders, and is required to coordinate treatment with medical professionals who are involved in the Member’s care, as set forth in the ADHS/DBHS Provider Manual-Cenpatico Edition.

ARTICLE III
DATA RECORDS, AUDITS, AND REPORTING REQUIREMENTS

- 3.1 Records.** Subcontractor is required to comply with all specifications for record keeping established by Cenpatico, ADHS, AHCCCS, and/or the federal government. Records shall include, at minimum, the following: financial statements; federal income tax returns; documents and other evidence of accounting procedures and practices; records relating to Covered Services, the quality of care, medical records, and prescription files; reports and working papers used in preparing reports; and any other records specified by the federal government, AHCCCS, ADHS, or Cenpatico. Subcontractor is required to preserve records for a period of ten (10) years from the date of final payment under the Agreement. If the Agreement is completely or partially terminated, Subcontractor is required to preserve records relating to the work terminated for a period of ten (10) years from the date of termination. Subcontractor is required to retain records that relate to grievances, disputes, litigation, or the settlement of claims arising out of the performance of the Agreement, or costs and expenses of the Agreement to which exception has been taken by AHCCCS, ADHS, or Cenpatico, for a period of ten (10) years after the date of final disposition or resolution thereof.
- 3.2 Audits.** Subcontractor agrees that Cenpatico, ADHS, and/or the federal government (including but not limited to HHS, the Comptroller General, or their designee) may conduct audits of Subcontractor during the term of the Agreement, and for ten (10) years thereafter, or until the date of completion of any audit, or until the expiration of any timeframe that Cenpatico, ADHS, and/or the federal government may require via written notice provided to Subcontractor at least thirty (30) days before the normal disposition date, whichever is later, unless such time frame is extended for reasons specified by regulation (such as in the event of fraud). Subcontractor is required to comply with all applicable AHCCCS Rules and the Audit Guide, policies and procedures relating to the audit of Subcontractor’s records, medical audit protocols, any inspection of Subcontractor’s facilities, and the surveys of Members and providers, and reviews.

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Subcontractor must cooperate with CMS and/or its designees (as applicable), ADHS/DBHS, and Cenpatico in any review, audit or investigation or request for information. Subcontractor must respond to all ADHS/DBHS, Cenpatico, and federal government requests for interviews, information, data, or documents as a part of any audit or investigation. These audits include, but are not limited to, the following:

- a. **Auditor General Audits.** Subcontractor is required to comply with and participate as required in the Performance Audit and other audits conducted by the Arizona Auditor General.
- b. **Other Federal and State Audits.** Subcontractor is required to comply with and participate as required in other federal and State audits, including the audit of an inpatient facility.
- c. **AHCCCS, ADHS, and Cenpatico Encounter Data Validation Studies (EDVS).** Subcontractor is required to cooperate with AHCCCS and ADHS/DBHS by participating in the annual Center for Medicaid and Medicare Services (CMS) data validation study and other validation studies. AHCCCS may revise study methodology, timelines, and sanction amounts based on agency review or as a result of consultations with CMS. Subcontractor will be notified in writing of any significant change in study methodology. Upon request, Subcontractor is required to provide any and all Covered Services data for validation as part of the studies. Cenpatico shall conduct, and Subcontractor is required to cooperate with, data validation studies of Subcontractor at least on a quarterly basis to, among other things, verify that all services delivered to Members are reported to Cenpatico accurately and timely, and documented in the Member's medical record. If it is determined that Subcontractor is not in compliance with ADHS or Cenpatico's encounter submission requirements, Cenpatico shall conduct, and Subcontractor is required to cooperate with, targeted encounter validation studies. The criteria used in encounter validation studies may include timeliness, correctness, and omission of encounters. Refer to the AHCCCS Data Validation Technical Document for further information.

AHCCCS may also perform special reviews of encounter data, such as comparing encounter reports to Subcontractor's claims files. Any findings of incomplete or inaccurate encounter data may result in the imposition of sanctions or requirement of a corrective action plan.

If AHCCCS, pursuant to the ISA with ADHS/DBHS or its regulations, imposes a sanction against ADHS/DBHS or Cenpatico for any act or omission which is an obligation Subcontractor was prohibited or required to perform under the Agreement, Subcontractor is required to be responsible for payment in an amount equal to the amount of the sanction imposed by AHCCCS against ADHS/DBHS or Cenpatico. Subcontractor is required to be responsible for all sanctions imposed against ADHS/DBHS or Cenpatico by AHCCCS as a result of data validation studies. Cenpatico shall notify Subcontractor in writing of the sanction amounts, if applicable

- 3.3 Member Satisfaction Surveys.** To the extent necessary, Subcontractor is required to actively participate in the development and implementation of the annual Member satisfaction survey. The survey must include, to the extent applicable, Member satisfaction with Medicare services for dual eligible SMI members. Subcontractor participation may include, but is not limited to: attending planning meetings and assisting with the distribution of surveys to Members. Subcontractor is required to use findings from the satisfaction survey to improve care for Members.
- 3.4 Inspections.** At any time during the term of the Agreement, Subcontractor is required to fully cooperate with inspections by Cenpatico, ADHS, AHCCCS, the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, the Comptroller General, the U.S. Office of Civil Rights, or any authorized representative of the federal or State governments. Subcontractor is required to allow Cenpatico and/or any authorized representative of the federal and State government:

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- a. Access to Subcontractor's staff and Members.
- b. Access to books and records related to the performance of the Agreement for inspection, audit, and reproduction. This shall include allowing Cenpatico and/or ADHS to inspect the records of any employee who works on the Agreement. Subcontractor agrees to obtain any necessary releases from Members 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.
- c. Access to Subcontractor's facilities, and its subcontractor facilities (if any) for the purpose of evaluating the quality, appropriateness, timeliness, and safety of services performed under the Agreement. The inspection shall be conducted at reasonable times unless the situation warrants otherwise.
- d. Access to test at their own cost the materials to be supplied under the Agreement. If Cenpatico and/or any authorized representative of the federal and state government determines non-compliance of the materials, Subcontractor is required to be responsible for the payment of all costs incurred for testing and inspection.
- e. Neither inspection of Subcontractor's facilities nor materials testing shall constitute final acceptance of the materials or services.

3.5 Reviews.

- a. **Cenpatico Administrative Reviews.** In its full and unfettered discretion, Cenpatico may conduct Administrative Reviews, at least annually, of Subcontractor. 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.
 - 1) **Scope.** The Administrative Review shall include review of:
 - operational and financial program compliance for all programs, including but not limited to State, federal, and contractual requirements;
 - clinical and business practices and policies;
 - financial reporting systems;
 - quality outcomes, timeliness, and access to healthcare services; and
 - any other operational and program areas identified by Cenpatico.
 - 2) **Procedure.**
 - In preparation for the Administrative Review, Subcontractor is required to fully cooperate with the Cenpatico Review Team by forwarding, in advance, policies, procedures, job descriptions, contracts, logs, and other information that Cenpatico may request.
 - At the time of the commencement of the review, Subcontractor is required to 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, are required to be available to the Review Team at all times during Cenpatico on-site review activities.
 - While on-site, Subcontractor is required to provide the Review Team with work space, access to telephone and internet services if available, electrical outlets, and privacy for conferences.

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- 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.
 - Recommendations made by the Review Team are required to be implemented by Subcontractor to bring Subcontractor into compliance with federal, State, AHCCCS, ADHS/DBHS, and/or Agreement requirements.
 - 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.
- b. **AHCCCS Operational and Financial Reviews of ADHS/DBHS.** In accordance with CMS requirements, Subcontractor is required to comply and participate with AHCCCS Operational and Financial Reviews of ADHS/DBHS. Subcontractor is required to comply with all audit provisions as required by AHCCCS.
- c. **Quality Management Reviews.** Subcontractor is required to 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 and facilitation of Member/family member interviews.
- d. **SAMHSA Core Reviews (SAPT and CMHS Block Grants).** Subcontractor is required to 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 and Community Mental Health Services Performance Partnership Grants.
- 3.6 Compliance with State's E-Health and Cenpatico's Community Health Record Initiatives.** Subcontractor is required to cooperate and comply with Cenpatico's administrative requirements in the implementation of the State's E-Health Initiative and Cenpatico's Community Health Record. The State's E-Health Initiative and Cenpatico's Community Health Record includes the establishment and implementation of a shared EHR/CHR accessible to ADHS, stakeholders, health plans, Members, Cenpatico, and Subcontractor and consistent with federal and State privacy laws. Such EHR/CHR will contain clinical, medical, and administrative information, including crisis plans, treatment/service plans for persons other than those with serious mental illness, individual service plans for persons with serious mental illness, and Advance Directives necessary to coordinate service delivery and conduct care management for Members. Subcontractor is further required to give ADHS/DBHS and Cenpatico access privileges and user-rights to any and all Member information within Subcontractor's MIS/EHR system. At a minimum, ADHS/DBHS and Cenpatico shall be permitted real-time access to client level demographics, claims and billing, service planning, assessment, and grievance and appeal data.
- 3.7 Sharing of Records.** Subcontractor is required to participate in any system established by Cenpatico to facilitate the sharing of records with other subcontractors involved in a Member's care, in order to facilitate the provision of a coordinated and seamless continuum of care, subject to applicable confidentiality requirements and all other applicable law. Subcontractor agrees to cooperate in the transfer of Member medical records to other subcontractors and to assume any cost associated therewith. Subcontractor is required to use best efforts to transfer any medical records in Subcontractor's custody within reasonable time of a Member's request or within the time frame required in State or federal laws or as outlined in the ADHS/DBHS Provider Manual-Cenpatico Edition.
- 3.8 Shared Databases.** Subcontractor is required to cooperate with Cenpatico in the development of shared databases including those established in the applicable ADHS/DBHS – Cenpatico Contract (see Exhibit A).

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Subcontractor is required to comply with the Cenpatico administrative requirements established for use of such shared databases.

- 3.9 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.
- 3.10 Electronic Medical Records System.** Subcontractor is required to maintain an electronic medical records system to allow for effective sharing of medical data and to maximize the management of medical information. Subcontractor is required to annually certify effective electronic storage redundancy through an independent data storage certification entity. A copy of the certification is required to be provided to Cenpatico on an annual basis.
- 3.11 Transparency.** The Parties understand and agree that because public money makes the Agreement possible; all transactions associated with the Agreement must be financially transparent to the public and to government regulators. In addition to other reporting and record keeping requirements set forth in the 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 the Agreement.
- 3.12 Periodic Reporting Requirements.** Subcontractor is required to submit to Cenpatico Deliverables listed in Exhibit E. Subcontractor is subject to corrective action or sanctions if Deliverable is submitted as untimely, inaccurate, or incomplete. By submitting Deliverables to Cenpatico, Subcontractor confirms that the information in the Deliverables is accurate and complete.
- a. Subcontractor shall be subject to the following standards for determining the adequacy of required reports:
- 1) **Timeliness.** Subcontractor is required to submit Deliverables on or before scheduled due dates. All required Deliverables shall be submitted by e-mail to azdeliverables@cenpatico.com no later than 5:00 p.m. M.S.T. on the date due, unless otherwise noted. 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 Deliverable to a location other than azdeliverables@cenpatico.com, Subcontractor is required to post notification of the submission to azdeliverables@cenpatico.com upon delivery to the alternate location.
 - 2) **Accuracy.** Subcontractor is required to prepare and submit Deliverables in strict conformity with authoritative sources and report specifications.
 - 3) **Completeness.** Subcontractor is required to fully disclose all Deliverables in a manner that is both responsive and relevant to the Deliverables' purpose with no material omissions.
- b. Subcontractor is required to comply with all changes to Deliverables specified by Cenpatico.
- c. Subcontractor is required to 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.
- 3.13 Reporting Suspected Fraud and Program Abuse.** Subcontractor is required to:
- a. Publicize and utilize Cenpatico's confidential and anonymous reporting process for the public,

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members, employees, and contractors to report fraud and program abuse complaints.

- b. Within ten (10) business days of discovery, or sooner whenever possible, make a written report of all instances of suspected fraud and / or program abuse to Cenpatico, the ADHS/DBHS Bureau of Corporate Compliance (BCC), and AHCCCS-OIG by completing the confidential AHCCCS Referral for Preliminary Investigation. [See 42 CFR 455.1 (a)(1); ARS § 36-2992.] This shall include acts of suspected fraud and/or program abuse that were resolved internally but involved AHCCCS funds. Failure to comply with the requirement to report suspected fraud and program abuse may result in the disciplinary action described in A.R.S. § 36-2992.
- c. Immediately make a written report to Cenpatico of all other instances of suspected fraud and / or program abuse that involve funding sources other than the Title XIX and Title XXI using the approved reporting ADHS/DBHS/BCC form, which is located at: <http://www.azdhs.gov/bhs/fraud.htm>.
- d. The Subcontractor is required to report to Cenpatico, within ten (10) days of notification, any contact made by AHCCCS-OIG in reference to an open fraud and program abuse case, a self-disclosure settlement, and/or any other type of activity involving communications by AHCCCS – OIG. Subcontractor shall advise Cenpatico of the final disposition of any case and/or settlement agreement made between the Subcontractor and AHCCCS-OIG.
- e. The Subcontractor shall record, track, and trend all fraud and program abuse related complaints and referrals. The record, at a minimum must contain the following information:
 1. Contact information of the complainant;
 2. Name and identifying information of person suspected of fraud and/or program abuse;
 3. Date and time complaint was received;
 4. Nature of the complaint allegations and summary of the concern;
 5. Potential estimated dollar loss amount and specific identification of funding source(s) involved;
 6. Subcontractors unique case identifying number;
 7. The department or agency in which the complaint has been reported, and
 8. Current status or final disposition.

3.14 Excluded Providers.

- a. The Subcontractor shall develop and implement policies and procedures to prohibit the Subcontractor from knowingly having a relationship with any person, entity, or affiliate that is disbarred, suspended, or otherwise excluded from participating in procurement or non-procurement activities. [42 CFR.610; 42 CFR 1001, 1901, and Executive Order Number 2549.]
- b. The Subcontractor shall develop and implement policies and procedures for screening the Excluded Parties Federal databases (SAM and LEIA) located at <https://www.sam.gov>, the Office of Inspector General (OIG), and the List of Excluded Individuals / Entities (LEIE) at <http://exclusions.oig.hhs.gov>., to determine whether potential and existing employees or contractors have been debarred, suspended or otherwise excluded from participating in procurement or non-procurement activities.
- c. Subcontractor shall submit the year-to-date list of all employees' and contractors' names that have been screened and checked against the exclusion databases, and submit the results to Cenpatico quarterly in accordance with Exhibit E of this Managed Health Services Agreement. At a minimum the year-to-date list of employees and contractors must include the following: name (last, first, middle initial); date of birth; last four digits of the Social Security Number; date of hire; current job position at the time of the verification; department / specialty; supervisor's name (last, first, middle initial); and

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AHCCCS ID number (when applicable). The Subcontractor shall observe all applicable rules of confidentiality when submitting protected personal information.

- d. Subcontractor shall notify Cenpatico and AHCCCS-OIG immediately of any instances of an excluded provider that is, or appears to be, in a prohibited relationship with the Subcontractor.

ARTICLE IV
INSURANCE, BONDING, AND LOSS PROVISIONS

4.1 Insurance. Subcontractor is required to procure and maintain, until all of Subcontractor’s obligations under the Agreement have been discharged, including any warranty periods under the 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 the Agreement and in no way limit the indemnity covenants contained herein. Neither Cenpatico nor the State of Arizona in any way warrants that the minimum limits contained herein are sufficient to protect Subcontractor from liabilities that might arise out of the performance of the work under the Agreement by Subcontractor, its agents, representatives, employees, or subcontractors, and Subcontractor is free to purchase additional insurance.

- a. **Minimum Scope and Limits of Insurance.** Subcontractor is required to provide coverage with limits of liability not less than those stated below:

Commercial General Liability-Occurrence Form: This policy is required to include bodily injury, property damage, personal injury, and broad form contractual liability coverage.

General Aggregate	\$2,000,000
Sexual Abuse/Molestation 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

Sexual Abuse and Molestation: The policy shall be endorsed to include coverage for sexual abuse and molestation.

The policy is required to 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 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 is required to 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 for losses arising from work performed by or on behalf of Subcontractor.

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Automobile Liability: Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of the Agreement.

Combined Single Limit (CSL)	\$1,000,000
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The policy is required to 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 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 is required to 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 for losses arising from work performed by or on behalf of Subcontractor.

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 for losses arising from work performed by or on behalf of Subcontractor. This requirement shall not apply to separately, each Subcontractor exempt under A.R.S. § 23-901 that execute the appropriate waiver (Sole Proprietor/Independent Contractor) form.

Professional Liability (Errors and Omissions Liability):

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

In the event that the professional liability insurance required by the Agreement is written on a claims-made basis, Subcontractor warrants that any retroactive date under the policy is required to precede the Origination Date of the 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 the Agreement is completed. The policy is required to cover professional misconduct or lack of ordinary skill for all persons employed by Subcontractor. Professional Liability is required to include Medical Malpractice for Behavioral Health Medical Practitioners.

This requirement can be met for independent contractors providing services to 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 is required to 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 shall be named as additional insured with respect to liability arising out of the activities

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performed by or on behalf of Subcontractor, involving automobiles owned, leased, hired or borrowed by Subcontractor.” The Policy is required to 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 for losses arising from work performed by or on behalf of Subcontractor.

- b. **Additional Insurance Requirements.** The policies are required to include, or be endorsed to include, the following provisions:
- 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 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 the Agreement.
 - Subcontractor’s insurance coverage is required to be primary insurance with respect to all other available sources.
 - Coverage provided by Subcontractor shall not be limited to the liability assumed under the indemnification provisions of the Agreement.
 - Subcontractor is required to submit a signed affidavit from Subcontractor’s insurance carrier annually verifying the specific licensed staff covered under the policy at that point in time. In addition, Subcontractor is required to send an updated insurance affidavit for all newly hired independently licensed professionals within 30 days of their date of employment.
- c. **Notice of Cancellation.** Each insurance policy required by the insurance provisions of the Agreement is required to 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 is required to be sent directly to Cenpatico, Attn: Contracts Department, 1501 W. Fountainhead Parkway, Suite 360, Tempe, AZ 85282, and is required to be sent by certified mail, return receipt requested.
- d. **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. Subcontractor acknowledges that neither Cenpatico nor the State of Arizona in any way warrants that the above-required minimum insurer rating is sufficient to protect Subcontractor from potential insurer insolvency.
- e. **Verification of Coverage.** Subcontractor is required to furnish Cenpatico with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) within 15 days prior to expiration of policy. 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 the Agreement must be in effect at or prior to commencement of work under the Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by the Agreement, or to provide evidence of renewal, shall constitute a material breach of the Agreement. All certificates required by the Agreement are required to be sent directly to Cenpatico, Attn: Contracts Department, 1501 W. Fountainhead Parkway, Suite 360, Tempe, AZ 85282. Cenpatico reserves the right to require complete, certified copies of all insurance policies required by the Agreement at any time.
- f. **Subcontractors.** Subcontractor is required to obtain from its subcontractors separate certificates and

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endorsements for each subcontractor. Subcontractor is required to maintain certificates of insurance from all of its subcontractors and providers and ensure adequate coverage is provided throughout the term of Subcontractors' agreement. All coverages for subcontractors shall be subject to the minimum requirements identified above.

- g. **Approval.** Any modification or variation from the *Insurance Requirements* in the Agreement shall be made by Subcontractor in consultation with Cenpatico, ADHS/DBHS, and the Department of Administration, Risk Management Division. Such action will not require a formal Amendment, but may be made by administrative action.
- h. **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.

- 4.2 **Responsibility for Tax Obligations and Insurance.** Subcontractor is responsible for all tax obligations, Worker's Compensation Insurance, and all other applicable insurance coverage obligations set forth herein for Subcontractor and its employees. AHCCCS, ADHS/DBHS, and Cenpatico shall have no responsibility or liability for any taxes or insurance coverage for Subcontractor.

ARTICLE V
FINANCIAL AND CLAIMS CONSIDERATIONS

- 5.1 **Cost Record Keeping System.** Subcontractor is required to maintain a cost record keeping system.
- 5.2 **Subcontractor Payment Obligations.** Subcontractor is required to 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 Subcontractor may be obligated, Subcontractor may contest any obligation so disputed until final determination by a court of competent jurisdiction; provided, however, that 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 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 un-discharged, or un-stayed by good and sufficient bond, for more than fifteen (15) days.
- 5.3 **Member to Be Held Harmless.** In no event, including but not limited to the event of Subcontractor's insolvency, Cenpatico's insolvency, any breach of the Agreement, Medicare or Cenpatico's failure to pay Subcontractor, or ADHS/DBHS's failure to pay Cenpatico, shall Subcontractor bill, charge, collect a deposit from, seek compensation, remuneration, or reimbursement from, or have any recourse against a Member or persons acting on a Member's behalf for Covered Services. This provision shall not prohibit the collection of any applicable Co-payments or deductibles. This section shall be construed to be for the benefit of Members, and shall supersede any oral or written agreement to the contrary now existing or hereafter entered into between Subcontractor and Members or persons acting on a Member's behalf. Subcontractor shall not attempt to collect payment directly or through a collection agency from a person claiming to be AHCCCS-eligible without first receiving verification that the person was ineligible for AHCCCS on the date of service, or that services provided were not Covered Services.
- 5.4 **Availability of Funding.** Payments to be made by Cenpatico pursuant to the 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 or any Cenpatico Related

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Entities may arise under the Agreement until funds are made available by the State for performance of the Agreement. Cenpatico shall not be liable for any hiring, purchases, expenditures, leases, agreements, or subcontracts entered into by Subcontractor in anticipation of funding. Funds may not presently be available for performance under the Agreement beyond the current State Fiscal Year. Moreover, should the State for any reason reduce the appropriations intended to apply to the performance of the Agreement for the current State Fiscal Year, Cenpatico may, at its sole election, take any of the following actions: (i) negotiate with Subcontractor for a reduced price or contract amount; or (ii) terminate the Agreement or any of its Attachments in whole or in part.

- 5.5 Claims Submission and Encounter Reporting.** Subcontractor is required to submit encounters or claims for each service rendered to a Member in accordance with encounter and claims submission requirements outlined in the ADHS/DBHS Provider Manual-Cenpatico Edition, the ADHS/DBHS Office of Program Support Operations and Procedures Manual, the ADHS/DBHS Covered Behavioral Health Services Guide, the ADHS/DBHS Financial Reporting Guide for the applicable GSA, the Client Information System (CIS) File Layouts and Specifications Manual requirements, Medicare laws and regulations, CMS instructions, and in accordance with HIPAA. Subcontractor must submit claims and encounters electronically, and they must be submitted at least twice a month. When submitting claims and encounters, Subcontractor’s chief executive officer, chief financial officer, or an individual delegated the authority to sign on behalf of one of these officers, and who reports directly to such officer, must certify (based on best knowledge, information, and belief) the accuracy, completeness, and truthfulness of the data.
- a. **Encounter Reporting.** When applicable, Subcontractor is required to provide encounter and other related data in compliance with the ADHS/DBHS Provider Manual-Cenpatico Edition in a form acceptable to Cenpatico, ADHS, AHCCCS, and CMS (when applicable). This data shall include, but is not limited to, outcomes and performance data, within such timeframes specified therein. Subcontractor agrees that timely submission of such data shall be a prerequisite to Subcontractor’s right to compensation under the Agreement. If Subcontractor fails to provide the encounter data as required and such failure results in fines, penalties or other monetary damages being imposed on Cenpatico, Subcontractor is required to pay Cenpatico any and all such costs incurred by Cenpatico. Subcontractor agrees that subject to applicable law, in Cenpatico’s discretion, Cenpatico may utilize and disclose all data submitted by Subcontractor pursuant to this section. Subcontractor shall have the right, subject to applicable law and upon reasonable advance notice to Cenpatico, to inspect such data for Subcontractor and, upon notice to Cenpatico, to correct errors and omissions in such data.
- b. **Claim and Encounter Value.** Subcontractor is required to submit, except for crisis services purchased on a capacity basis and Non-Title XIX Encounter Relief approved by ADHS, encounter value equal to or greater than 100% of the total contract value. The maximum claim and encounter value for a unit of service shall be the lesser of the amount billed, or the amount listed in the Schedule contained within Exhibit B or in Subcontractor’s Fee Schedule (Exhibit D) based upon the procedure code encountered. All services shall be reported by Subcontractor in accordance with the rates, procedures, procedure codes, and processes outlined in the Agreement.
- 5.6 Compensation.** Cenpatico shall compensate Subcontractor for the Covered Services provided to Members in accordance with the terms of the Agreement. The method and amount of compensation and/or other consideration shall be provided in Exhibit B, “Method of Payment,” which may be amended or supplemented from time to time pursuant to the terms of the Agreement. For all non-hospital fee-for-service clean claims, Cenpatico shall pay interest on “late claim payments” at a rate of ten percent (10%) per annum. “Late claim payments” are those that Cenpatico pays more than 30 days after Subcontractor submits a clean claim. For hospital clean claims, a slow payment penalty will be paid and a quick pay

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discount will be taken in accordance with A.R.S. 36-2903.01 (G)(5). No additional slow payment penalty or interest will be paid for late claim payments on hospital clean claims, including in the case of a grievance or claim dispute.

- 5.7 Compensation for Utilization Management Activities.** The Parties agree that the compensation to be paid to Subcontractor pursuant to Exhibit B hereto does not, and shall not be construed to, directly or indirectly provide incentives to individuals or entities conducting utilization management activities to deny, limit, or discontinue Covered Services to any Member in accordance with 42 CFR § 438.210(e). Furthermore, Subcontractor is prohibited, through the use of incentives, direct or indirect payments, or other practices (including but not limited to incentives in the form of compensation to individuals or entities that conduct Subcontractor’s utilization management activities), from denying, limiting or discontinuing medically necessary services to any Member. Subcontractor is further required to comply with all applicable regulations related to physician incentive contracts.
- 5.8 Third Party Payor Contracts.** Subcontractor is required to annually pursue registration/contracts with third party payors to facilitate coordination of services and coordination of benefits. Subcontractor is required to pursue registration/contracts with appropriate private insurance carriers, Medicare, and appropriate State agencies, and maintain evidence on file for three (3) years of attempts to obtain contracts with the third party payors. Subcontractor is further required to pursue all opportunities for credentialing independent licensed staff with third party vendors to facilitate receipt of third party payments.
- 5.9 Coordination of Benefits and Collection Practices.** Subcontractor is required to adhere to coordination of benefits and third-party liability requirements in conformance with the ADHS/DBHS Provider Manual-Cenpatico Edition, and is required to effectively coordinate benefits. Subcontractor is required to actively pursue all third party billing and reimbursement to obtain third-party payment, including, but not limited to Medicare. Subcontractor may deny a service to a Member if it knows a third-party (i.e., other insurer) will pay the service. If a third-party insurer (other than Medicare) requires the Member to pay any co-payment, coinsurance, or deductible, Subcontractor is responsible for billing Cenpatico for these charges. Cenpatico is not responsible for paying coinsurance and deductibles that are in excess of what Cenpatico would have paid for the entire service. Subcontractor may bill Cenpatico after ninety days with proof that the third party payor was billed and that Subcontractor has not received payment from Medicare or other third party payor. Subcontractor must submit an EOB/EOP when payment has been received from a third party payor. Cenpatico will adjust the claim appropriately.
- 5.10 Reporting of Changes and Additional Health Insurance.** Subcontractor is required to communicate any known change in or addition to Members’ health insurance information, including Medicare, to Cenpatico, no later than seven (7) days from the date of discovery. In addition, Subcontractor is required to notify AHCCCS within seven (7) calendar days of discovering any Cenpatico Member has additional health insurance coverage, utilizing the AHCCCS web-based “Third Party Referral/Change Form.”
- 5.11 Medicare Part D Prescription Drug Plans.** Medicare-eligible Members, including Members who are dually eligible for Medicare (Title XVIII) and Medicaid (Title XIX/XXI) will receive Medicare Part D prescription drug benefits through Medicare Prescription Drug Plans (PDPs) or Medicare Advantage Prescription Drug Plans (MAPDs). Prescription drug coverage for Medicare-eligible Members enrolled in Medicare Part D will be based on Medicare Part D plans’ formularies. Subcontractor is required to assist Member to re-enroll in Medicare Part D and fill out forms for low income subsidy annually. State funds will be used to pay or reimburse Medicare Part D cost sharing for Members who are dual eligible or Non-Title XIX Medicare eligible and determined to have a Serious Mental Illness (SMI), as outlined in the ADHS/DBHS Provider Manual-Cenpatico Edition. Payment of any Medicare Part D cost sharing or any Medicare Part D excluded or

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non-covered drugs for Not-Title XIX eligible, Non SMI Members is based on available funding as determined by Cenpatico.

- 5.12 Recoupment Rights.** Subcontractor is required to reimburse Cenpatico for the following immediately upon demand: (i) the amount of any overpayment or erroneous payment made by Cenpatico to Subcontractor; (ii) any amounts that Cenpatico pays a third-party to provide Covered Services that Subcontractor is obligated to provide under the Agreement; (iii) amounts owed by Subcontractor in relation to under-delivery of services or failure to provide encounter value equal to payment; (iv) any amounts paid to Subcontractor for Covered Services delivered on dates on which Subcontractor did not have the credentials, license, certification, or accreditation required to be an AHCCCS registered provider; (v) amounts deemed by Cenpatico, ADHS, or the Arizona Auditor General not to have been disbursed in accordance with the terms of the applicable ADHS/DBHS – Cenpatico Contract (see Exhibit A); and (vi) any recoupment imposed by ADHS, AHCCCS, or the federal government for which Subcontractor is the responsible party.
- 5.13 Recoupment Process.** At Cenpatico’s sole discretion, any recoupment Subcontractor owes Cenpatico shall be either: (i) deducted from Cenpatico’s payments to Subcontractor or (ii) reimbursed to Cenpatico upon written demand, pursuant to the terms specified in the demand. As a material condition to Subcontractor’s obligations under the Agreement, Subcontractor agrees that all recoupment and any offset rights pursuant to the 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 or other government authority that may now have or hereafter have jurisdiction over subcontractor. Upon request, Subcontractor is required to void encounters within 90 days for claims that are recouped in full due to billing errors. For recoupments that result in an adjusted claim value, Subcontractor is required to submit replacement encounters within 90 days.
- 5.14 Right of Offset.** Cenpatico shall be entitled to offset against any amounts Cenpatico owes Subcontractor, the expenses or costs incurred by Cenpatico, or sanctions assessed by Cenpatico concerning Subcontractor’s non-conformance performance or failure to perform the Agreement, including expenses, costs, and damages described in this Exhibit.
- 5.15 Profit Limitations.** Subcontractors paid only on a Fee for Service basis for services shall not be subject to profit limitations. Subcontractors paid on a Block Purchase or Block Payment methodology are limited to the percentage of annual profit on services reimbursed on the total of Block Purchase, Block Payment, or Fee for Service arrangements, specified by applicable GSA in Exhibit B.
- a. Subcontractors shall return to Cenpatico all Non-Title XIX/XXI funds not expended on services or administration for Non-Title XIX/XXI eligible persons. Subcontractors shall not earn a profit from allocated funds for Supported Housing for Title XIX SMI Members and all services to Non-Title XIX/XXI SMI adults.
 - b. Subcontractor is required to calculate profits and losses for SAPT and/or CMHS Grant funds separately from other programs. Subcontractor’s profits for SAPT Grant funds is limited to the percentage of service revenue per Contract Year (as defined for each GSA in Exhibit H).
 - c. Subcontractor’s profit for Non-Title XIX/XXI Other and County funds, if applicable, shall be limited to the percentage of service revenue per Contract Year (as defined for each GSA in Exhibit H).
 - d. Subcontractor is required to return excess profits to Cenpatico solely at the discretion of Cenpatico and/or ADHS/DBHS.
 - e. Subcontractor shall not include performance incentives earned under this contract as revenue for the

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purpose of calculating profit or loss corridors.

- f. Subcontractor shall not include imposed sanctions or taxes as an expense for the purpose of calculating profit or loss.

5.16 Evergreen Contract Financial Considerations. In the event the Agreement is not amended before the end of the Contract Year, the financial considerations as outlined in Exhibit B of the most recently executed Agreement will be extended indefinitely on a pro rata basis until the Managed Health Services Agreement is amended or terminated in accordance with the terms of the Agreement. In the event the evergreen contract financial considerations are in effect, monthly payments will be made on either a pro rata basis or the monthly amount specified in the payment schedule identified in Exhibit B.

5.17 Financial Reporting and Viability Measures. Subcontractor is required to meet the following financial viability standards, on a monthly basis. The Defensive Interval must be greater than or equal to thirty (30) days. The Defensive Interval is calculated as follows: $\text{Defensive Interval} = (\text{Cash} + \text{Cash Equivalents}) \div ((\text{Operating Expense} - \text{Non Cash Expense}) / (\text{Period Being Measured in Days}))$. The Current Ratio must be greater than or equal to 1.00. The Current Ratio is calculated as follows: $\text{Current Ratio} = \text{Current Assets} \div \text{Current Liabilities}$.

5.18 Block Payment Requirements. Subcontractors paid on a block payment methodology as identified in Exhibit B shall meet the following requirements. 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. Subcontractor's reimbursement shall not exceed the total cumulative maximum amount for the State Fiscal Year for the provision of Covered Services, as defined by ADHS/DBHS, as indicated. Subcontractor agrees to manage the block payment allocations to ensure consistent provision of services throughout the term of the Agreement. Block payment service payments, as specified in Exhibit B, will be processed for payment on or about the 15th 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.

Subcontractor acknowledges and agrees to accept the maximum payment specified and agrees to the terms of said payment arrangement. 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 is required to be subject to recoupment for insufficient encounter value related to each individual Fund Type. Over delivery of encounter value in one Fund Type cannot 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 the Agreement and provided through any and all facilities operated by Subcontractor in Arizona, regardless of the location of the facilities.

If Subcontractor does not bill Cenpatico (e.g., Subcontractor is capitated), Subcontractor's encounter data that is required to be submitted to the Cenpatico pursuant to contract is defined for these purposes as a "claim for payment." Subcontractor's provision of any service results in a "claim for payment" regardless of whether there is any intention of payment. All said claims shall be subject to review under any and all fraud and abuse statutes, rules and regulations, including but not limited to A.R.S. § 36-2918.

5.19 Block Purchase Requirements. Subcontractors paid on a block purchase methodology as identified in Exhibit B shall meet the following requirements. Subcontractor must successfully produce encounters to support

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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. Subcontractor's reimbursement shall not exceed the total cumulative maximum amount for the State Fiscal Year for the provision of Covered Services. Subcontractor agrees to manage the block purchase allocations to ensure consistent availability and provision of services throughout the term of the Agreement. Block purchase service payment, as specified herein, will be processed for payment on about the 15th 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.

- 5.20 Fee for Service (FFS) Requirements.** Subcontractors paid on a Fee for Service (FFS) methodology as identified in Exhibit B shall be paid in accordance to the requirements outlined in the Agreement.
- 5.21 Fee for Service with Maximum Limit Requirements.** Subcontractors paid on a Fee for Service (FFS) with Maximum Limit methodology as identified in Exhibit B shall meet the following requirements. Subcontractor's reimbursement shall not exceed the total cumulative maximum amount for the State Fiscal Year for the provision of Covered Services. Subcontractor agrees to manage the maximum allocation to ensure consistent provision of services throughout the term of the Agreement. Subcontractor acknowledges and agrees to accept payment for procedure codes as specified in Exhibit B and Exhibit D up to the maximum amount specified and agrees to the terms contained in the Agreement. Subcontractor acknowledges the maximum annual contract payment for the Contract Year specified in Exhibit B and agrees to the terms of such payment arrangements. Subcontractor will receive all fees based upon the Fee Schedule in Exhibit D.
- 5.22 Federal Block Grant Requirements.** If applicable, Subcontractor agrees to not use Federal Block Grant funds for inpatient hospital services; physical health care services; to make cash payments to intended recipients of health services; to purchase or improve land; to purchase, construct, or permanently improve (other than minor remodeling) any building or other facility except for minor remodeling; to purchase major medical equipment; to provide financial assistance to any entity other than a public or non-profit entity; to provide individuals with hypodermic needles or syringes for illegal drug use, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for AIDS; to pay the salary of an individual through a grant or other extramural mechanism at a rate in excess of Level I of the Executive Salary Schedule for the award year (see http://grants.nih.gov/grants/policy/salcap_summary.htm); or to purchase treatment services in penal or correctional institutions in the State of Arizona.
- 5.23 State General Funds Requirements.** In accordance with A.R.S § 35-190, State General Funds are appropriated by the Arizona Legislature and must be expended by September 30th of each year at Cenpatico and Subcontractor levels. These funds are noted as State General Funds in the ADHS/DBHS Allocation Schedule.

Cenpatico shall monitor Subcontractor expenditures to ensure that State General Funds are spent by September 30th. Cenpatico and Subcontractors are not allowed to defer State General Funds.

Subcontractors are required to return unexpended State General Funds to Cenpatico; and subsequently, Cenpatico shall return the funds to ADHS/DBHS within fifteen (15) days of ADHS/DBHS' request or within thirty (30) days after the State Fiscal Year, whichever is earlier.

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Subcontractor is required to reimburse Cenpatico immediately upon demand, for any unexpended State General Funds. Cenpatico shall have the right, at its sole discretion, to withhold unexpended funds from future payments.

- 5.24 Third Party Antitrust Violations.** 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 Subcontractor, toward fulfillment of the Agreement.
- 5.25 Reassignment.** Subcontractor agrees that it shall comply with the provider reimbursement terms relating to the proper reassignment of the right to claims payment and the billing of personally performed services set forth at A.A.C. R9-22-714 Subsections B, C and D.

ARTICLE VI
NON-PERFORMANCE PROVISIONS

- 6.1 Corrective Actions.** Subcontractor is required to comply with corrective action when Cenpatico determines that Subcontractor has not fulfilled its obligations under the Agreement.
- a. **Bases for Corrective Action.** 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; management objectives; appointment standards data; 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.
 - b. **Corrective Action Letters (CALs) and Corrective Action Plan (CAPs).** The Corrective Action Letter (CAL) and the Corrective Action Plan (CAP) shall be a means of communication between Cenpatico and Subcontractor when Cenpatico determines that Subcontractor has not fulfilled its obligations under the Agreement. Cenpatico shall inform Subcontractor through a written CAL that an issue requiring corrective action has been identified and that Subcontractor must prepare a CAP. The CAL 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 Subcontractor must implement the required corrective action(s). Subcontractor shall develop and implement a Cenpatico-approved CAP to address the issues identified in the CAL.
 - c. **Sanctions Failure to Comply with Corrective Action.** If, at the end of the specified time period, Cenpatico determines that Subcontractor has complied with the CAL requirements, Cenpatico will take no further action with respect to the imposition of sanctions. If, however, Cenpatico determines that Subcontractor has not complied with the Corrective Action Letter requirements, Cenpatico may proceed with the imposition of sanctions.
- 6.2 Performance Sanctions.**
- a. **Cenpatico's Sanction Authority.** Cenpatico may impose financial sanctions for failure to comply with the terms of the Agreement (including requirements set forth in the documents incorporated by reference). Cenpatico shall determine, at its sole discretion, the amount of any sanction. Sanctions shall be assessed according to the severity of the violation.
 - b. **Sanction Warning Letter.** Prior to issuing a performance sanction, Cenpatico will issue a Sanction

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Warning Letter, informing Subcontractor that it will be sanctioned if a contract violation is not corrected within the timeframe set forth in the Sanction Warning Letter. However no sanction warning letter is required for Section 6.7, Performance Credit for Failure to Comply with Exhibit E, below.

- c. **Notice of Sanction.** If Subcontractor does not timely comply with all requirements in a Sanction Warning Letter, Cenpatico will provide Subcontractor with a written notice of sanction specifying the sanction, the grounds for the sanction, the amount of funds to be withheld from Subcontractor's payments, the steps necessary to avoid future sanctions, and the right to file a claim dispute to challenge the sanction. Subcontractor is required to complete all steps necessary to correct the violation within the time frame established by Cenpatico in the notice of sanction. In the event Subcontractor fails to adequately correct the violation within established time frames, Cenpatico may, in its sole discretion, impose additional sanctions which may be equal to or greater than the sanction imposed for the unresolved violation.
- d. **Provider Appeal Rights.** Any dispute regarding Subcontractor's liability for a sanction imposed under the Agreement shall be resolved through the provider Claim Dispute process outlined in the ADHS/DBHS Provider Manual–Cenpatico Edition.

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

- a. Three thousand dollar (\$3,000.00) fine for failure to satisfy the requirements in the timeframe articulated in a Sanction Warning Letter issued by Cenpatico.
- b. One thousand dollar (\$1,000.00) fine for failure to reply in the requested timeframe to a formal request for information sent by email or in writing from the Cenpatico Provider Relations Department.
- c. One thousand dollar (\$1,000.00) fine for a third Encounter Data Validation Study site visit for repeated failure to meet minimum standards.
- d. 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.
- e. Five dollar (\$5.00) fine per claim, per day, for failure to reverse a claim as required in a Corrective Action Plan because of deficiencies Cenpatico identified in an Encounter Data Validation Study.
- f. Additional monthly penalties for failure to correct a 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 Subcontractor has not corrected the violation(s), Cenpatico may impose an additional penalty of the original penalty amount times two (one plus one month). If two months pass and 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).)

6.4 ICC Agency Performance Sanctions. Unless explicitly stated otherwise in the Agreement or document incorporated by reference, at Cenpatico's discretion, ICC Agencies, as identified in Exhibit A, are subject to the following additional sanctions:

- a. Fifteen hundred dollar (\$1,500.00) fine for failure to submit a Corrective Action Plan by the due date specified in a Corrective Action Letter issued by Cenpatico.

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- b. Three thousand dollar (\$3000.00) fine for failure to respond to an Issue Resolution within the time frame specified by ADHS/DBHS.
- c. Three thousand dollar (\$3,000) fine per incident for failure to provide appropriate follow-up services or coordination of care for a period of 60 days or more for any Member deemed as “high risk” by Cenpatico.
- d. Three thousand dollar (\$3,000.00) fine for failure to provide quality care or effective coordination of care as determined by Cenpatico, per incident.
- e. Five hundred dollar (\$500.00) fine for each incident in which subcontractor fails to provide coordination of care documents and reports to affiliated providers of care within three (3) workdays after receipt of a request for said documents, including, but not limited to PCPs, CPS, other State and local agencies, and Specialty Providers.
- f. Five hundred dollar (\$500.00) fine for each audited chart that fails to meet the Behavioral Health Service Plan (BHSP) minimum performance standard (MPS) on the quarterly DBHS BHSP audit.
- g. Fifteen hundred dollar (\$1,500.00) fine for failure to meet the Coordination of Care (COC) minimum performance standard (MPS) on the quarterly DBHS COC audit for each population (child/adult) for the quarter.
- h. Three thousand dollar (\$3,000.00) fine for each month subcontractor fails to maintain an average demographic acceptance rate for the month of 90%.
- i. Five thousand dollar (\$5,000.00) fine for failure to maintain and provide a contracted program outlined in Article V of Exhibit A.
- j. Ten thousand dollar (\$10,000.00) fine for failure to provide appropriate coordination of care for a Member, resulting in an untoward event that affects the local community or the Member.
- k. Five thousand dollar (\$5000.00) sanction for failure to pass the Cenpatico Annual Medical Record Audit.

6.5 Sanctions Related to Providers on a Block Payment Methodology. Unless explicitly stated otherwise in this Agreement or documents incorporated by reference, any Subcontractor paid on a Block Payment Methodology, as identified in Exhibit B, is subject to the following additional sanction:

A fine of ten percent (10%) of the amount encountered for any and all encounters not timely submitted pursuant to the timely filing guidelines set forth in the ADHS/DBHS Provider Manual-Cenpatico Edition

6.6 Administration of Sanction Payments. Any amounts due and owing to Cenpatico under this Article may be offset by Cenpatico against any payments due Subcontractor under the Agreement from the next monthly payment until the full amount is paid. Subcontractor and Cenpatico each acknowledge that the payments described in this Article 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 Claim Dispute, Cenpatico shall pay any such sums within 30 days of the final resolution of the dispute process.

6.7 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 the Agreement, Cenpatico may, in addition to any other remedies available under the Agreement, impose a sanction against Subcontractor in an amount equal to the amount of any such

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sanction imposed on Cenpatico. Subcontractor shall reimburse Cenpatico for these sanctions upon demand, or, at Cenpatico's election, the sanctions may be offset against any payments due to Subcontractor under the Agreement. 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 Subcontractor's share of responsibility.

- 6.8 Performance Credit for Failure to Comply with Exhibit E.** Subcontractor has agreed to the time frames for the Deliverables 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 credit for such delay in the amount of five hundred dollars (\$500.00) per incident.
- 6.9 Right to Assurance.** If Cenpatico in good faith has reason to believe that Subcontractor does not intend to, or is unable to perform or continue performing under the Agreement, Cenpatico may demand in writing that Subcontractor give a written assurance of intent to perform. Failure by Subcontractor to provide written assurance within the number of days specified in the demand may, at Cenpatico's option, be the basis for terminating the Agreement, or other rights and remedies available by law or provided by the Agreement.
- 6.10 Stop Work Order.** Cenpatico may, at any time, by written order to Subcontractor, require Subcontractor to stop all or any part, of the work called for by the Agreement for period(s) of days indicated by Cenpatico after the order is delivered to Subcontractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, Subcontractor is required to 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, 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.
- 6.11 Suspension of Services Pending Resolution of a Felony Charge.** Cenpatico reserves the right to issue a suspension notice immediately suspending some or all of the services being provided by Subcontractor or Subcontractor's director, officer, employee, or volunteer if Subcontractor or a Subcontractor director, officer, employee, or volunteer is charged with a crime involving fraud, dishonesty, or abuse. Upon receipt of the suspension notice, Subcontractor is required to immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the services covered by the suspension notice during the suspension period. Subcontractor is required to inform Cenpatico of the outcome of the charge and provide any requested written documentation substantiating the outcome. If the charge is dismissed, Cenpatico will terminate the suspension notice and Subcontractor will resume providing services. If Subcontractor or a Subcontractor director, officer, employee, or volunteer is convicted of a crime involving fraud, dishonesty, or abuse, Cenpatico reserves the right to determine appropriate actions. Where applicable, Cenpatico shall make an equitable adjustment to the compensation in Exhibit B, and the Agreement shall be amended in writing accordingly.
- 6.12 Non-exclusive Remedies.** The rights and the remedies of Cenpatico under the Agreement are not exclusive.

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ARTICLE VII
TERM, TERMINATION, INDEMNIFICATION, AND DISPUTE RESOLUTION

- 7.1 Term and Voluntary Termination.** This Agreement shall commence on the Effective Date and continue in effect until the following September 30th (Initial Term). On October 1st of each year, the 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 the Agreement, or an Attachment individually, no fewer than sixty (60) days prior to the expiration of the Initial Term or any Renewal Term of the Agreement or such Attachment, as applicable; or (2) the Agreement or its Attachments are terminated pursuant to other provisions herein.
- 7.2 Elective Termination.** Either party may elect to terminate the Agreement for any reason with ninety (90) days' prior written notice, delivered by certified mail, to the other party.
- 7.3 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.
- 7.4 Termination for Conflict of Interest.** Cenpatico may terminate the 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 the Agreement on behalf of Cenpatico is or becomes at any time while the Agreement or an extension of the Agreement is in effect an employee or a consultant to Subcontractor with respect to the subject matter of the Agreement. The termination shall be effective when Subcontractor receives written notice of the termination unless the notice specifies a later time.
- 7.5 Termination for Improper Gratuities.** Cenpatico may, by written notice, terminate the Agreement, in whole or in part, if Cenpatico determines that employment or a gratuity was offered or made by Subcontractor or a representative of Subcontractor to any officer or employee of Cenpatico for the purpose of influencing the outcome of the securing the Agreement, an amendment to the Agreement, or favorable treatment concerning the 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 Subcontractor.
- 7.6 Termination for Suspension or Debarment.** Cenpatico may, by written notice to Subcontractor, immediately terminate the Agreement if Cenpatico determines that 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 unit or other governmental body. Execution of the Agreement shall attest that Subcontractor is not currently suspended or debarred. If Subcontractor becomes suspended or debarred, Subcontractor is required to immediately notify Cenpatico.
- 7.7 Termination for Convenience.** Cenpatico reserves the right to terminate the Agreement, in whole or in part at any time, in Cenpatico's sole discretion when in Cenpatico's best interests without penalty or recourse. Upon receipt of the written notice, Subcontractor is required to stop all work, as directed in the notice, and minimize all further costs to Cenpatico. In the event of termination under this section, all documents, data and reports prepared by Subcontractor under the Agreement shall become the property of and be delivered to Cenpatico upon demand. 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.
- 7.8 Termination for Default.** In addition to the rights reserved in the Agreement, Cenpatico may terminate the Agreement in whole or in part due to Subcontractor's failure to: obtain initial credentialing or re-

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credentialing, subject to the provider appeal processes outlined in the ADHS/DBHS Provider Manual-Cenpatico Edition; comply with any material term or condition of the Agreement; acquire and maintain all required insurance policies, bonds, licenses, and permits; or make satisfactory progress in performing the Agreement. Cenpatico shall provide written notice of the termination and the reasons for it to Subcontractor. Upon termination under this section, all documents, data, and reports prepared by Subcontractor under the Agreement shall become the property of and copies be delivered to Cenpatico on demand. Cenpatico may, upon termination of the Agreement, purchase, on terms and in the manner that Cenpatico deems appropriate, materials or services to replace those under the Agreement. Subcontractor shall be liable to Cenpatico for any excess costs incurred by Cenpatico in purchasing materials or services in substitution for those due from Subcontractor.

7.9 Termination Due to Non-Award, Expiration, or Termination of ADHS/DBHS – Cenpatico Contract(s).

Subcontractor acknowledges that the Agreement is subject to automatic termination upon the non-award, expiration, or termination of the applicable ADHS/DBHS – Cenpatico Contract(s) (see Exhibit A).

7.10 Voidability of Agreement. The Agreement is voidable and subject to immediate termination by Cenpatico upon 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.

7.11 Termination Following Notice to Cure.

a. **Notice to Cure.** Cenpatico may issue a notice to cure for failure to carry out any material obligation, term, or condition of the 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 Cenpatico terminating the Agreement in whole or in part. By way of example (but not limited to this list), Cenpatico may issue a written notice to cure to Subcontractor for acting or failing to act as in (but not limited to) any of the following:

- 1) Subcontractor fails to adequately perform the services set forth in the Agreement, including the documents incorporated by reference;
- 2) Subcontractor fails to complete the work required or to furnish the materials required within the time stipulated by the Agreement;
- 3) Subcontractor fails to reverse claims that Cenpatico determines have been billed in error following an Encounter Data Validation Study; or
- 4) Subcontractor fails to make progress in the performance of the contract and/or gives Cenpatico reason to believe Subcontractor will not or cannot perform to the requirements of the contract.

b. **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:

- 1) Terminate the Agreement in whole or in part due to failure by Subcontractor to carry out any material obligation, term, or condition of the Agreement;
- 2) Reserve all rights or claims to damage for breach of any covenant of the Agreement; or
- 3) 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,

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any reasonable expense of testing shall be borne by Subcontractor.

- c. **Termination Following Notice to Cure.** Upon termination under this paragraph, all goods, materials, documents, data, and reports prepared by Subcontractor under the Agreement shall become the property of and be delivered to Cenpatico. Moreover, Cenpatico reserves the right to procure, on terms and in the manner that it deems appropriate, services to replace those under the Agreement. Cenpatico may recover any reasonable excess costs resulting from these actions from Subcontractor by deduction from an unpaid balance and any other remedies as provided by law.

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

- a. If Subcontractor will lose, relinquish, or have materially affected any licensure or certification necessary to provide Covered Services in the State, with such termination to be effective upon the effective date of such loss, relinquishment or material effect;
- b. 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;
- c. 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 Services; or (iii) Subcontractor's conviction of fraud or malfeasance;
- d. If Subcontractor assigns or delegates the Agreement without Cenpatico's prior written approval; or
- e. If Subcontractor breaches its warranty that it complies with all federal and State immigration laws and regulations.

7.13 Cenpatico's Right to Contract with an Alternate Subcontractor. In addition to any other rights provided by law or under the Agreement, upon a determination by Cenpatico that Subcontractor has failed to perform any requirements of the Agreement that materially affect the health, safety or welfare of Members, Cenpatico may, immediately upon written notice to Subcontractor, directly locate an alternative Subcontractor for so long as necessary to ensure the uninterrupted care to Members and to accomplish the orderly transition of Members to other providers in the Cenpatico network, or until Subcontractor corrects the Agreement performance failure to the satisfaction of Cenpatico.

7.14 Rights and Obligations Upon Termination. In addition to the other requirements stated in the Agreement, Subcontractor is required to comply with the following provisions upon issuing or receiving a notice of non-renewal or a notice termination, until the effective date of the notice:

- a. Subcontractor is required to perform work consistent with the requirements of the 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 Members to another provider, as well as the reductions in Subcontractor's compensation that correlate to the reduced quantity of Covered Services that Subcontractor provides as Members are transitioned to other providers during the transition period.
- b. 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

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Subcontractor to exceed the compensation limits set forth in the Agreement.

- 7.15 Transition Obligations.** In the event the Agreement or any portion thereof, is suspended or terminated for any reason, or expires, Subcontractor is required to assist Cenpatico in the transition of its Members to another subcontractor at Subcontractor's expense. In addition, Cenpatico reserves the right to extend the term of the Agreement on a month-to-month basis to assist in any transition of Members. Subcontractor is required to:
- a. Make provisions for continuing all management and administrative services and the provision of direct services to Members until the transition of all Members is completed and all other requirements of the Agreement are satisfied;
 - b. Designate a person with appropriate training to act as the transition coordinator. The transition coordinator is required to interact closely with Cenpatico and Subcontractor's staff to ensure a safe and orderly transition;
 - c. Upon Cenpatico's request, submit for approval a detailed plan for the transition of its Members, including the name of the transition coordinator;
 - d. Provide all reports set forth in the Agreement and necessary for the transition process. This includes but is not limited to providing Cenpatico with the following reports, due on the fifth (5th) day of each succeeding month for the prior month:
 - 1) Staff List;
 - 2) Recovery Coach Assignment List; and
 - 3) Open Consumer List, tracking all persons transitioned due to a contract, program or service change, suspension, limitation or termination to ensure service continuity, including: Name, Title XIX/XXI status, date of birth, population type, current services that the Member is receiving, services that the Member should be receiving, new agency involved, evidence that Member 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 Members. (Other elements to be tracked may be added based on the particular circumstances.);
 - e. Make a good faith effort, in the manner and method directed by Cenpatico, to notify all affected Members of the termination of the Agreement by either Cenpatico or Subcontractor thirty (30) calendar days before the effective date of the termination ;
 - f. Complete payment of all outstanding obligations for Covered Services rendered to Members. Subcontractor is required to cover continuation of services to enrollees for the duration of the period for which payment has been made;
 - g. Cooperate with successor subcontractors during the transition period including, at minimum, sharing transferring Member information and records. Cenpatico will notify Subcontractor with specific instructions and required actions at the time of transfer;
 - h. Return any funds advanced to Subcontractor for coverage of Members for periods after the date of termination to Cenpatico within thirty (30) days of termination of the Agreement; and
 - i. Supply all information necessary for reimbursement of outstanding claims.
- 7.16 Effect of Termination.** If the Agreement expires or terminates pursuant to the provisions of this Article, then the Agreement, along with all Attachments, shall terminate on the applicable expiration or termination

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date, subject to certain obligations that survive the contract termination as expressly provided in the Agreement or as identified in the Survival section below.

7.17 Indemnification.

- a. **General Indemnification.** Subcontractor will defend, indemnify, protect and hold harmless Cenpatico, its Affiliates, and corresponding officers, directors, employees, and agents (hereinafter referred to as Indemnitee) from and against any and all claims, losses, liens, demands, attorneys' fees, damages, liabilities (including, without limitation, any vicarious and derivative liability), costs, expenses, obligations, causes of action, or suits (collectively "Claims") to the extent that such Claims are caused by, or arise out of, or are connected in any way with: (i) any act or omission, whether active or passive and whether actual or alleged, or willful misconduct of Subcontractor, its affiliates, officers, directors, agents, or employees; or (ii) the material breach of the Agreement by Subcontractor of any of its contractual obligations, covenants, undertakings, or promises under the Agreement. 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 contractor 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 the 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 the Agreement, Subcontractor agrees to waive all rights of subrogation against Cenpatico, its officers, directors, agents, and employees for losses arising from the work performed by Subcontractor for Cenpatico. This provision shall not apply if subcontractor is a State agency, board, commission, or university.
- b. **Taxes, Required Contributions, and Indemnification.** Subcontractor shall pay all federal, State, and local taxes applicable to its operation and any persons employed by Subcontractor. Subcontractor shall hold Cenpatico and 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.
- c. **Patent and Copyright Indemnification.** Subcontractor shall indemnify and hold harmless Cenpatico and the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of performance of the Agreement or use by Cenpatico or the State of materials Subcontractor furnishes or work Subcontractor performs under the Agreement. Cenpatico and/or the State shall reasonably notify Subcontractor of any claim for which it may be liable under this paragraph. If Subcontractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- d. **Effect of Termination on Indemnification Obligation.** In the event of expiration or termination or suspension of the Agreement by Cenpatico, the expiration or termination or suspension shall not affect the obligation of Subcontractor to indemnify Cenpatico or the State for any Claims against Cenpatico or the State arising from Subcontractor's performance of the Agreement and for which Subcontractor would otherwise be liable under the Agreement.

- 7.18 Survival.** The following provisions shall survive termination of the Agreement: Section 1.7 (Health Insurance Portability and Accountability Act of 1996); Section 2.23 (Member Complaint, Grievance, and Appeal Processes); Section 3.1 (Records); Section 3.2 (Audits); Article 5 (Financial and Claims Considerations); Section 7.15 (Transition Obligations); Section 7.19 (Claim Disputes); Section 7.20 (Dispute Resolution).

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7.19 Claim Disputes. A Claim Dispute is Subcontractor’s dispute of a payment, denial or recoupment of the payment of a claim, the imposition of a sanction, or the non-payment or partial payment of a performance incentive. All Claim Disputes shall be resolved according to requirements outlined in the ADHS Policy and Procedures Manual, GA 3.2 and ADHS/DBHS Provider Manual – Cenpatico Edition. Subcontractor may appeal a Cenpatico decision regarding a Claim Dispute in accordance with the ADHS/DBHS Provider Manual – Cenpatico Edition. Subcontractor shall carry out ADHS/DBHS, AHCCCS, and Cenpatico decisions issued with respect to a Claim Dispute. Subcontractor is responsible to provide any necessary professional, paraprofessional, and administrative resources to represent its interest in resolving a Claim Dispute. Cenpatico will not be responsible for any attorneys’ fees and costs Subcontractor incurs in filing a Claim Dispute or related appeal.

7.20 Dispute Resolution. Other than Claim Disputes, which shall be resolved through the applicable administrative review process pursuant to the above section, in the event that any party asserts that there exists any dispute, claim or controversy that arises out of the Agreement or relating to the Parties’ relationship under the Agreement, such party shall first send a written notice to the other party specifying the nature of the asserted dispute (Notice of Dispute) and requesting a meeting to attempt to resolve the dispute. The Notice of Dispute shall include the specific nature of the dispute and shall identify any relevant documents known at the time the Notice of Dispute is issued. The Parties shall promptly meet and shall engage in good-faith efforts to resolve the dispute. If no resolution is reached within thirty (30) days after delivery of the Notice of Dispute, any party to the dispute may thereafter commence arbitration. Except for Claim Disputes, which shall be resolved through the applicable administrative review process, arbitration proceedings shall be the sole, exclusive, and final remedy for all disputes, claims, or controversies between Cenpatico and Subcontractor.

The Parties agree that any arbitration will be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), except as those rules are modified herein (AAA Rules). Notwithstanding the foregoing and the AAA Rules to the contrary, the Parties will privately administer the arbitration without AAA case administration. The initiating party (the “claimant”) shall give the other party (the “respondent”) written notice of its intention to arbitrate (the “demand”). The demand shall contain a statement setting forth the nature of the dispute, the names and addresses of all other parties, the amount involved, if any, and the remedy sought. A respondent may serve on the claimant an answering statement within fifteen (15) days after receipt of the demand. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought. If no answering statement is filed within the stated time, the respondent will be deemed to deny the claim.

The arbitration proceeding will be conducted in Maricopa County, Arizona, pursuant to the arbitration law of Arizona then in effect before a single arbitrator with expertise in government contracts and administrative law who is mutually acceptable to the Parties. If the Parties are not able to agree on a single arbitrator within thirty (30) days from the date of the deadline for serving an answering statement or, where applicable, a response to a counterclaim, each party shall select a neutral and the two selected neutrals shall select the arbitrator. The arbitrator shall have no right to award any punitive or exemplary damages or to vary or ignore the terms of the Agreement and shall be bound by Arizona law. Any arbitration in which the total amount in controversy is less than \$100,000 shall be conducted in a single hearing day. Except where contrary to Arizona statute, the prevailing party in any arbitration shall be entitled to recover from the losing party any costs and fees related to the arbitration, including but not limited to arbitrator fees and attorneys’ fees and costs. Similarly, except where contrary to Arizona statute, the prevailing party in any action to compel arbitration or enforce any arbitration award arising out of the Agreement shall be entitled to recover from the losing party any costs and fees related to the arbitration, including but not

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limited to arbitrator fees and attorneys' fees and costs. Because of the confidential nature of the Agreement, as set forth in Section 6.13 of the Managed Health Services Subcontractor Agreement, the Parties further agree that in any action to compel arbitration or enforce any arbitration award arising out of the Agreement, no party may file any part of the Agreement or its Attachments in the court record, except this Section.

The existence of a Notice of Dispute or arbitration proceeding shall not in and of itself constitute cause for termination of the Agreement. Notwithstanding any dispute arising under the Agreement, each party hereto shall continue to perform its obligations hereunder pending the decision of the arbitrator unless otherwise terminated by agreement of the Parties, order of the arbitrator, or pursuant to the termination provisions of the Agreement.