



## INTERGOVERNMENTAL AGREEMENT (Agreement # BH16-0022)

This Intergovernmental Agreement ("Agreement") is entered into by and between the Pascua Yaqui Tribe ("TRBHA"), a federally-recognized Indian Tribe, and the Arizona Health Care Cost Containment System ("AHCCCS"), the agency of the State of Arizona authorized to administer the Medicaid and behavioral health systems in the State of Arizona.

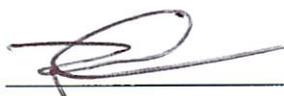
### Project Title: Tribal Regional Behavioral Health Authority

WHEREAS, AHCCCS has authority to contract for services specified herein in accordance A.R.S. Title 36, Chapters 29 and 34, and A.R.S. §§ 11-951 and 11-952; and

WHEREAS, the Pascua Yaqui Tribe has the authority to contract for the performance of the services provided herein pursuant to the laws, rules and sovereign authority of the Pascua Yaqui Tribe; and

NOW, THEREFORE, the TRBHA and AHCCCS (collectively, the "Parties" or individually, a "Party"), pursuant to the above and in consideration of the matters set forth herein, do mutually agree as follows:

**TRBHA**

Signature: 

Printed Name: **Robert Valencia**

Title: **Tribal Chairman - Pascua Yaqui**

Date: JUN 29 2016

This Agreement has been reviewed by the undersigned Tribal Government Attorney who has determined that this Agreement is in the appropriate form and is within the power and authority granted to the TRBHA under the laws of Arizona and the Pascua Yaqui Tribe.

for:  6/22/16  
Signature date

W. Smith Michael  
Printed Name

Asst. Attorney General  
Title

**AHCCCS:**

Signature: 

Printed Name: **Meggan Harley, CPPO, MSW**

Title: **Procurement and Contracts Manager**

Date: 6/20/2016

In accordance with A.R.S. § 11-952, this Agreement has been reviewed by the undersigned General Counsel of the agency, who has determined that the Agreement is in the proper form and is within the powers granted under the laws of the State of Arizona to AHCCCS.

 6/20/16  
Signature date

Benjamin C Runkle  
Printed Name

AHCCCS Associate General Counsel  
Title

## **I. SCOPE OF WORK**

### **A. Background and Purpose**

1. The Pascua Yaqui Tribe recognizes that it is beneficial for the State of Arizona to acknowledge and understand the history of the Yoeme (Yaqui) people and its significance in the healing of the various Yoeme communities through the provision of Behavioral Health Services. While each Indian Tribe has its own unique history and culture, all share a common experience of trauma and immense loss. It is recognized that history impacts the health of American Indians today, especially that of tribal elders who struggled for survival. The State of Arizona, through the Arizona Health Care Cost Containment System, acknowledges the need to form a partnership with the Pascua Yaqui Tribe to meet the behavioral health care needs of tribal members. The State recognizes the sovereign right of the Pascua Yaqui Tribe to determine the applicability of and the extent to which its tribal values and belief systems will be incorporated into the behavioral health services it provides.
2. This Agreement values the collective efforts and the desire to build a genuine partnership, which reiterates the commitment to the government-to-government relationship that exists between the State of Arizona and Pascua Yaqui Tribe. The development and implementation of the Agreement is in recognition of this special relationship.
3. The State of Arizona recognizes the right of tribal governments to self-govern and supports tribal sovereignty and self-determination.
4. The Arizona Health Care Cost Containment System has the authority to administer the Medicaid and behavioral health systems in the State of Arizona. The purpose of this Agreement is to delegate from AHCCCS to the TRBHA the duties described herein. The TRBHA agrees to use the funding provided through this Agreement to administer the programs described in this Agreement solely for the benefit of individuals and families who:
  - 2.1. Are members of the Pascua Yaqui Tribe, a federally-recognized Tribe, their dependents, and/or individuals with close economic and social ties with the Pascua Yaqui Tribe;
  - 2.2. Reside in the geographic service area, which includes Traditional Yoeme Communities; and
  - 2.3. Meet the qualifications for one of the following eligibility groups:
    - 2.3.1. Individuals eligible for services under Titles XIX and XXI of the Social Security Act;
    - 2.3.2. Regardless of Titles XIX or XXI eligibility, persons who, in accordance with state law and SMI Eligibility Determination policies, have been determined to be "Seriously Mentally Ill" as defined by A.R.S. § 36-550(4) (2016);
    - 2.3.3. General Mental Health Adults ("GMH"): persons age eighteen (18) and older who have general behavioral health issues but 1) have not been determined to be Seriously Mentally Ill and 2) are not eligible for services under Titles XIX or XXI of the Social Security Act;
    - 2.3.4. Substance Abuse Adults ("SA"): persons age eighteen (18) and older who have a substance use disorder, or are referred for DUI screening, education and

- treatment, but 1) have not been determined to be Seriously Mentally Ill and 2) are not eligible for services under Titles XIX or XXI of the Social Security Act;
- 2.3.5. Children below the age of 18 who are in need of behavioral health services but do not qualify for services under Titles XIX or XXI of the Social Security Act; or
  - 2.3.6. Any individual who participates in mental-health related prevention programs provided by or through the Agreement.

3. Throughout this Agreement, the individuals and families who are eligible for the TRBHA's services will be referred to as "Members."

## **B. Care Coordination**

1. The TRBHA will coordinate healthcare services for Members including:

### 1.1. Treatment Services

- 1.1.1. Behavioral Health Counseling and Therapy.
- 1.1.2. Assessment, Evaluation and Screening Services.
- 1.1.3. Other Professional Services.

### 1.2. Rehabilitation Services

- 1.2.1. Skills Training and Development, and Psychosocial Rehabilitation Living Skills Training.
- 1.2.2. Cognitive Rehabilitation.
- 1.2.3. Behavioral Health Prevention/Promotion Education and Medication Training and Support Services (Health Promotion).
- 1.2.4. Psychoeducational Services and Ongoing Support to Maintain Employment.

### 1.3. Medical Services/Dental Services

- 1.3.1. Medication.
- 1.3.2. Laboratory, Radiology and Medical Imaging.
- 1.3.3. Medical Management.
- 1.3.4. Electro-Convulsive Therapy.

### 1.4. Support Services

- 1.4.1. Case Management services whose primary purpose is the application of clinical and behavioral knowledge to manage care needs for Members who are medically or behaviorally complex, and require intensive medical and/or psychosocial support.
- 1.4.2. Personal Care Services.
- 1.4.3. Home Care Training Family (Family Support).
- 1.4.4. Self-Help/Peer Services (Peer Support).
- 1.4.5. Home Care Training to Clients.
- 1.4.6. Unskilled Respite Care.

- 1.4.7. Supported Housing (based on funding availability).
- 1.4.8. Sign Language or Oral Interpretive Services.
- 1.4.9. Medically Necessary Non-Covered Services.
- 1.4.10. Transportation (Emergency and Non-emergency).

#### 1.5.Crisis Intervention Services

- 1.5.1. Crisis Intervention Services (Mobile).
- 1.5.2. Crisis Intervention Services (Stabilization).
- 1.5.3. Crisis Intervention (Telephone).

#### 1.6.Inpatient Services

- 1.6.1. Hospital.
- 1.6.2. Subacute Facility.
- 1.6.3. Residential Treatment Center.

#### 1.7.Residential Services

- 1.7.1. Behavioral Health Short-Term Residential (Level II), Without Room and Board.
- 1.7.2. Behavioral Health Long-Term Residential (Non-medical, Non-acute), Without Room and Board (Level III).
- 1.7.3. Mental Health Services – Not Otherwise Specified (NOS) (Room and Board).

#### 1.8.Behavioral Health Day Program

- 1.8.1. Supervised Behavioral Health Treatment and Day Programs.
- 1.8.2. Therapeutic Behavioral Health Services and Day Programs.
- 1.8.3. Community Psychiatric Supportive Treatment and Medical Day Programs.

#### 1.9.Prevention Services.

- 1.10. Traditional Medicine services identified by the TRBHA.

### 2. The TRBHA will conduct the following care coordination activities, and establish and follow care coordination policies and procedures that reflect integration of services by:

- 2.1.Engaging in activities that support Member advocacy, help Members navigate healthcare systems, and ensure that Members, families, and healthcare providers work together and communicate effectively to achieve positive outcomes for Members.
- 2.2.Ensuring the provision of appropriate services in the least restrictive settings that meet Members' needs in the most cost-effective manner.
- 2.3.Ensuring that all care coordination activities are for the purpose of improving the quality of Members' care and meeting the requirements set forth in this Agreement.

- 2.4. Specifying under what circumstances services are coordinated by the TRBHA, including the methods for coordination and specific documentation of these processes.
- 2.5. Coordinating AHCCCS-covered services with AHCCCS-registered providers, and community and social services.
- 2.6. Employing a sufficient number of qualified personnel to fulfill all care coordination functions.
- 2.7. Coordinating with AHCCCS-Division of Fee-for-Service Management (“DFSM”) to maintain continuity of care for Members transitioning to the TRBHA. If a Member becomes eligible for Title XIX or XXI benefits through the Hospital Presumptive Eligibility process, AHCCCS-DFSM will notify the TRBHA of such eligibility and will collaborate with the TRBHA to maintain continuity of care.
- 2.8. Establishing timely and confidential communication of clinical information among providers serving the Member. The TRBHA will facilitate this communication exchange as needed and establish monitoring activities, such as a record review, to ensure that the exchange occurs as follows:
  - 2.8.1. “Urgent”- Requests for intervention, information, or response within 24 hours.
  - 2.8.2. “Routine”- Requests for intervention, information or response within 10 days.
- 2.9. Establishing a process to ensure coordination of Members’ healthcare needs based on early identification of health risk factors or special care needs.
- 2.10. Coordinating care for members with high behavioral or physical healthcare needs, and/or high costs.
  - 2.10.1. The TRBHA will implement the following in collaboration with AHCCCS-DFSM:
    - 2.10.1.1. Identification of High Need/High Cost members;
    - 2.10.1.2. Plan interventions for addressing appropriate and timely care for identified High Need/High Cost members; and
    - 2.10.1.3. Report outcomes summaries to AHCCCS as specified in the TRBHA Chart of Deliverables.
  - 2.10.2. The Parties will meet at a high level as often as necessary, but at least every other month, to discuss barriers and outcomes.
  - 2.10.3. Care coordination meetings and staffing meetings will occur at least monthly, or more often as necessary, to affect change.
- 2.11. Ensuring proper care for Members with special healthcare needs, including:
  - 2.11.1. Identifying members with special health care needs;
  - 2.11.2. Coordinating an assessment by appropriate healthcare professional(s) for the ongoing needs of each Member identified as having special health care need(s) or condition(s); and

- 2.11.3. Allowing direct access to a specialist as appropriate for the Member's condition and identified special health care needs (e.g. a standing referral).
- 2.12. Documenting interventions and changes in the coordination of care as they occur. The TRBHA's records, including treatment plans and communication of clinical and behavioral information for each Member, must reflect all aspects of Members' care coordination. The TRBHA's policies must include processes for digital (electronic) signatures when electronic documents are utilized.
- 2.13. Implementing interventions to educate Members on the appropriate use of the ED and diverting Members to the right care at the appropriate place of service.
  - 2.13.1. AHCCCS-DFSM will identify and track Members who utilize Emergency Department (ED) services inappropriately 4 or more times within a 6 month time period. AHCCCS-DFSM will transmit that information to the TRBHA.
  - 2.13.2. The TRBHA's interventions to educate Members should include but are not limited to:
    - 2.13.2.1. Outreach phone calls/visits;
    - 2.13.2.2. Educational letters;
    - 2.13.2.3. Behavioral health referrals;
    - 2.13.2.4. High Need/High Cost program referrals;
    - 2.13.2.5. Disease management referrals; and/or
    - 2.13.2.6. Exclusive Pharmacy referrals.
- 2.14. The TRBHA will maintain a health information system that collects, integrates, analyzes, validates and reports data necessary to implement care coordination. Data elements must include:
  - 2.14.1. Member demographics;
  - 2.14.2. Services provided to Members; and
  - 2.14.3. Other information necessary to guide the selection of, and meet the data collection specifications required for care coordination.

### 3. Referral Network

3.1. The TRBHA will refer Members to AHCCCS-registered providers, including Indian Health Services and Tribally-owned/operated 638 system providers, in the Fee-for-Service Network.

#### 3.2. Network Assistance

- 3.2.1. The TRBHA will track gaps in accessibility of services needed by Members, including identifying barriers to accessing care.
  - 3.2.1.1. The TRBHA will notify AHCCCS-DFSM on an ongoing basis of any identified gaps in AHCCCS-DFSM's provider network and/or any identified barriers to accessing care.
  - 3.2.1.2. The TRBHA will assist AHCCCS-DFSM in identifying any gaps in AHCCCS-DFSM's provider network involving providers with specialized behavioral health competencies for children/adolescents and adults

including developmental disability, sexual offender treatment, sexual abuse trauma, and adolescent substance abuse services.

3.2.1.3. The TRBHA will assist AHCCCS-DFSM in identifying the number of providers competent in delivering services to Members with developmental disabilities and the number of providers with bilingual capabilities (including sign language).

3.2.2. Nothing in this section will be construed to require the TRBHA to provide AHCCCS with an “inventory” of providers serving Members.

3.2.3. The TRBHA will track and notify AHCCCS-DFSM of out of state placements.

3.2.4. The TRBHA will track and notify AHCCCS-DFSM of inter-RBHA/TRBHA transfers.

3.2.5. AHCCCS will notify the TRBHA of changes to the Fee-for-Service network due to provider termination or suspension. If AHCCCS makes such a change to the provider network, the TRBHA will collaborate with AHCCCS-DFSM to identify Members who need to transition to a different provider and will work on ensuring continuity of care for members.

3.3. The TRBHA will collaborate with AHCCCS to ensure that providers will not be restricted or inhibited in any way from communicating freely with or advocating for persons regarding:

3.3.1. Behavioral health care, medical needs and treatment options, even if needed services are not covered by AHCCCS or if an alternate treatment is self-administered;

3.3.2. Any information the behavioral health recipient needs in order to decide among all relevant treatment options;

3.3.3. The risks, benefits, and consequences of treatment or non-treatment; and

3.3.4. The behavioral health recipient’s right to participate in decisions regarding his or her behavioral health care, including the right to refuse treatment, and to express preferences about future treatment decisions.

#### 4. Collaboration with Other Entities

4.1. In performing care coordination services, the TRHBA will work collaboratively with any entity necessary to the effective treatment of Members, including:

4.1.1. Agencies of the State of Arizona, including AHCCCS, the Arizona Department of Economic Security (“ADES”), the Arizona Department of Public Safety, the Administrative Office of the Courts, and the Arizona Department of Corrections.

4.1.2. Tribal governmental entities.

4.1.3. Regional Behavioral Health Authorities, other Tribal Regional Behavioral Health Authorities and AHCCCS’ managed care organizations.

4.1.4. County and local governmental agencies, including the courts, the probation departments and jails.

4.2. Collaboration activities will include:

- 4.2.1. Coordinating the delivery of behavioral health services to Members served by more than one entity, including:
  - 4.2.1.1. Sharing information among the entities;
  - 4.2.1.2. Resolving problems;
  - 4.2.1.3. Identifying resources that each entity will contribute to the care and support of Members; and
  - 4.2.1.4. Arranging for co-location as applicable.
- 4.2.2. Coordinating the care of Members co-enrolled with the ADES, Division of Developmental Disabilities (“DDD”), including:
  - 4.2.2.1. Working directly with DDD staff and service providers involved with the Member;
  - 4.2.2.2. Providing assistance in managing difficult behaviors;
  - 4.2.2.3. Inviting DDD staff to participate in the development of the behavioral health services plan and all subsequent planning meetings as part of the clinical team; and
  - 4.2.2.4. Exchanging information regarding the initial assessment, and Individual or Family Support Plan.

4.3. The TRBHA agrees to meet periodically with AHCCCS outside of clinical staffing.

- 4.3.1. These meetings will be held to address coordination of care issues, compliance coordination, collaboration issues and to solve any other identified problems.
- 4.3.2. The frequency of these meetings will be often enough to identify and resolve issues in a timely manner but held at least semi-annually.
- 4.3.3. The meetings will be attended by TRBHA staff who have sufficient program and administrative knowledge and authority to resolve issues.

4.4. The TRBHA agrees to address and attempt to resolve coordination of care issues at the lowest possible level. In the event that the TRBHA is unable to resolve an identified issues, the TRBHA will forward the following in writing to AHCCCS:

- 4.4.1. The issue that the TRBHA is unable to resolve;
- 4.4.2. The actions already taken that have not resulted in resolution of the issue; and
- 4.4.3. Recommendations for resolution of the problem.

## 5. Performance Standards:

### 5.1. Definitions

- 5.1.1. “Minimum Performance Standard” is the minimally expected level of performance by the TRBHA.
- 5.1.2. “Goal” is a reachable standard for a given performance indicator for the contract year. If the TRBHA has already met or exceeded the AHCCCS established or approved Minimum Performance Standard for any indicator, the TRBHA will strive to meet the Goal for that indicator.

5.2. The following table identifies the Minimum Performance Standards and Goals for each required aspect of performance:

Aspect of Performance	Annual Measurement	Minimum Performance Standard	Goal
<b>Behavioral Health Service Plan</b> for members with current service plans that incorporate the needs and services recommendations identified in their assessments.	AHCCCS will review medical records of those members that have a current assessment and current treatment plan and will identify which services are on the treatment plan	85%	95%
<b>Behavioral Health Service Provision</b> the number of members who receive the services that were recommended in their service plans.	Once the services are identified from the above mentioned treatment plans, AHCCCS will determine if the members are receiving the services identified by checking the AHCCCS claims data and other information provided by TRBHA staff for those members	85%	95%

5.3.If the TRBHA does not show demonstrable and sustained improvement toward meeting AHCCCS established or approved Minimum Performance Standards for the Behavioral Health Service Plan, AHCCCS will notify the TRBHA to develop a corrective action plan.

5.3.1. The corrective action plan will be received by AHCCCS within thirty (30) calendar days after notification to the TRBHA of the deficiencies.

- 5.3.2. The corrective action plan will be approved by AHCCCS prior to implementation.
- 5.3.3. AHCCCS may conduct one or more follow-up onsite reviews or other audit processes to verify compliance with a corrective action plan.
- 5.3.4. Failure to achieve adequate improvement following the implementation of the corrective action plan without a justifiable explanation may result in an adverse contract action by AHCCCS.

### **C. Block Grant Funded Services**

- 1. The Substance Abuse Prevention and Treatment Block Grant (SABG) and Mental Health Block Grant (MHBG) are annual formula grants provided to the states as authorized by the U.S. Congress to support behavioral health services. AHCCCS is the designated Single State Agency to administer block grants in Arizona.
- 2. General Requirements
  - 2.1. The TRBHA will ensure that services funded under the federal block grants meet all legal requirements of the respective block grant.
  - 2.2. The TRBHA will establish a mechanism for determining eligibility for utilization of block grant funding.
  - 2.3. The TRBHA will ensure that block grant funds are the payer of last resort.
- 3. General Prohibitions. The TRBHA will not expend Block Grant funds on the following activities:
  - 3.1. To provide inpatient hospital services, with the exception of detox services (only if provided in an Outpatient setting, a free-standing Level I sub-acute facility, or Rural Substance Abuse Transitional Center) and as provided in 4.3. below.
  - 3.2. To make cash payments to intended recipients of health services.
  - 3.3. To purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment.
  - 3.4. To satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds (Maintenance of Effort).
  - 3.5. To provide financial assistance to any entity other than a public or nonprofit private entity.
  - 3.6. To provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, 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 or Hepatitis-C.

3.7.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](http://grants.nih.gov/grants/policy/salcap_summary.htm).

3.8.To purchase treatment services in penal or correctional institutions.

3.9.To provide acute care or physical health care services including payments of co-pays.

3.10. To make flex funds purchases.

#### 4. Substance Abuse Block Grant Requirements.

4.1.Purpose: The SABG supports primary prevention and treatment services for persons with substance use disorders. It is used to plan, implement and evaluate activities to prevent and treat substance abuse.

4.2.SABG funds are used to ensure access to treatment and long-term recovery support services for (in order of priority):

4.2.1. Pregnant women/teenagers who use drugs by injection;

4.2.2. Pregnant women/teenagers who use substances;

4.2.3. Other persons who use drugs by injection;

4.2.4. Substance using women and teenagers with dependent children and their families, including females who are attempting to regain custody of their children; and

4.2.5. All other clients with a substance abuse disorder, regardless of gender or route of use, (as funding is available).

4.3.As a condition of receiving SABG Treatment funding, the TRBHA will establish mechanisms to ensure that each pregnant woman who requests and is in need of substance use disorder treatment is admitted within forty-eight (48) hours and is provided interim services through admission.

4.4.The TRBHA will utilize the AHCCCS online waitlist portal for documenting any pregnant woman who is awaiting placement in a residential treatment center. AHCCCS will provide training on the utilization of the AHCCCS online waitlist portal.

4.5.The TRBHA will establish early intervention services for Members diagnosed with HIV or TB which may include testing for those diseases if a part of the TRBHA's spending plan.

4.6.Subject to the availability of funds, the TRBHA will develop and implement primary substance abuse prevention services. Prevention services will be made available for all individuals to reduce the risk of development or emergence of substance use disorders and to improve overall behavioral health status in targeted families and communities.

4.6.1. The TRBHA will utilize evidenced based prevention strategies.

4.6.2. The TRBHA will submit a Prevention Strategic Plan once annually by May 1st for the following state fiscal year. In addition, the TRBHA will submit an annual

report on the utilization of prevention funds by November 1<sup>st</sup> for the previous state fiscal year.

## **5. Mental Health Block Grant**

5.1. The MHBG establishes or expands an organized community-based system of care for providing mental health services to adults determined to have a serious mental illness (“SMI”) and children determined to have a serious emotional disturbance (“SED”).

5.2. Services funded through the MHBG are based on available funding. The TRBHA will prioritize expenditures of block grant funds and delivery of services for the following priority populations:

5.2.1. Non-Title XIX/XXI SMI; and

5.2.2. Non-Title XIX/XXI SED.

## **D. Crisis Response System**

1. The TRBHA will maintain a twenty-four (24) hours per day, seven (7) days per week crisis response system.

2. The crisis response system will fulfill the following requirements:

2.1. The TRBHA will have one toll free crisis telephone number and may have a local crisis telephone number. The crisis telephone number will be widely publicized within the service area. Having one publicized telephone crisis response line for the service area does not preclude the TRBHA from allowing or requesting providers to be the primary contact for crisis calls from behavioral health recipients that the provider serves.

2.2. A telephone crisis response line will be sufficiently staffed to meet the reasonably expected service demand of all persons in the service area. The crisis phone response service will, to the extent possible, be answered within three (3) telephone rings. Crisis phone response will include triage, referral and dispatch of service providers and patch capabilities to and from 911 and other crisis providers as applicable.

2.3. Response to crisis calls will be designed to meet the immediate and urgent response requirements as outlined in the AHCCCS policy and have the ability to record referrals, dispositions, and overall response time.

2.4. The TRBHA will coordinate with appropriate providers to obtain substance use disorder/psychiatric stabilization services for Members on a 24-hour basis.

2.5. The crisis response system may respond with any of the services outlined in the Scope of Work of this Agreement but the service will be clinically responsive to the needs of the person.

2.6. Services provided in response to immediate and urgent response needs will be provided in order to intervene and offer resolutions, not merely triage and transfer, and will be

provided in the least restrictive setting possible, consistent with individual and family need and community safety.

- 2.7. The crisis response system must have the capacity to communicate with individuals who do not speak or understand English.
- 2.8. The TRBHA's customer service will have patch capabilities to the crisis response system.
- 2.9. To the extent possible, the TRBHA will initiate and maintain a collaborative effort with fire, police, emergency medical services, hospital emergency departments, AHCCCS Health Plans and other providers of public health and safety services as appropriate, to inform them of how to use the crisis response system. To the extent possible, the TRBHA will meet periodically with representatives of fire, police, emergency medical services and hospital emergency departments to coordinate services and to assess and improve the TRBHA's crisis response services.
- 2.10. The TRBHA is responsible for coordinating psychiatric and/or psychological consultations provided to Title XIX and Title XXI enrolled behavioral health recipients in emergency room settings.
- 2.11. If a provider determines that the person receiving services may need court-ordered evaluation and the person is off reservation, the TRBHA will comply with relevant state law (A.R.S. Title 36, Chapter 5, Article 4). If the person is on reservation the TRBHA will comply with the relevant laws of the Pascua Yaqui Tribe.
- 2.12. If a Tribal Court orders an involuntary commitment for inpatient treatment, AHCCCS will assist the TRBHA in admitting the patient in the appropriate facility.

#### **E. Persons who Have Been Determined to Be Seriously Mentally Ill**

1. Overview: Persons who have been determined to have a serious mental illness have distinct behavioral health care needs. AHCCCS and the TRBHA are committed to meeting the behavioral health care needs of persons who have been determined to have a serious mental illness. Towards that end, the TRBHA will fulfill the additional requirements set forth in this section to meet the needs of persons with a serious mental illness.
2. Eligibility Determinations for Serious Mental Illness
  - 2.1. The TRBHA, or its designee, will conduct reviews to determine if an adult person is seriously mentally ill as defined in A.R.S. § 36-550(4) in accordance with the Arizona Administrative Code Title 9, Chapter 21, Article 3 and the SMI Eligibility Determination Policy contained within the AHCCCS Medical Policy Manual ("AMPM") Policy 320-P. These reviews will be conducted for all persons who request a determination or those who meet criteria during an assessment as outlined in the AHCCCS policy.
  - 2.2. The TRBHA will ensure that processes developed and utilized to determine if a person has a serious mental illness do not result in barriers for behavioral health recipients and

excessive expense due to multiple layers of reviews beyond what is required by the SMI Eligibility Determination Policy.

3. Delivery of Services. Delivery of services for persons determined to have a serious mental illness will comply with Arizona Administrative Code Title 9, Chapter 21. In addition to the other services described in this Scope of Work, the TRBHA will fulfill the following services delivery requirements for Members who have been determined to have a serious mental illness.

### 3.1.Special Assistance

- 3.1.1. Special Assistance is the support provided to a person determined to have a Serious Mental Illness who is also unable to articulate treatment preferences and/or participate effectively in the development of the Individual Service Plan (ISP), Inpatient Treatment and Discharge Plan (ITDP), grievance investigation and/or appeal processes due to cognitive/intellectual impairment and/or a medical condition.
- 3.1.2. The TRBHA will require its staff serving persons with a SMI to have the necessary skill and knowledge to identify and refer all persons in need of Special Assistance to the AHCCCS Office of Human Rights.
- 3.1.3. The TRBHA will require its staff serving persons with a SMI to communicate regularly with any person designated by the AHCCCS Office of Human Rights (OHR advocate, guardian, family member or friend) to provide Special Assistance to the TRBHA's Member.
- 3.1.4. The TRBHA will add the requirements of E.3.1.2 and E.3.1.3 to its contracts with subcontractors serving persons with a SMI.

### 3.2.Housing Program

- 3.2.1. At AHCCCS' discretion and in collaboration with the TRBHA, the development of SMI housing will be based upon the availability of funding, approval of the TRBHA's spending plan and the identified need of the Members.
- 3.2.2. Off-Reservation Residential Placements or Independent Housing: The TRBHA will not place persons with a serious mental illness in a residential program where more than twenty-five percent (25%) of any housing complex can house individuals with a serious mental illness.
- 3.2.3. Supervisory Care Homes and Unlicensed Board & Care Homes
  - 3.2.3.1.To the extent possible, the TRBHA will assess the living situation for all persons with a serious mental illness to ensure that the person's basic needs are met in an environment that is safe, secure and consistent with their behavioral needs.
  - 3.2.3.2.To the extent possible, the TRBHA will ensure that any situations observed that pose a threat to the health or safety of a person is promptly resolved.
- 3.2.4. The TRBHA will use its best efforts to assist individuals interested in moving to locate alternative settings with appropriate supports, consistent with their individual needs and preferences.

### 3.3.Services for Incarcerated Individuals Determined to have a Serious Mental Illness

- 3.3.1. The TRBHA will work with jails and prisons to coordinate the discharge and transition of incarcerated individuals to ensure the continuation of prescribed medication and other behavioral health services.
- 3.3.2. The TRBHA will collaborate with the appropriate County and Tribal jail diversion programs for persons with a serious mental illness.

### 3.4.Arizona State Hospital

- 3.4.1. The TRBHA will collaborate with the Arizona State Hospital administration and agree upon, protocols for referral, bed utilization and census management, coordination of care, discharge planning and dispute resolution.
- 3.4.2. The TRBHA will ensure coordination and continuity of care for Members admitted to the Arizona State Hospital, including:
  - 3.4.2.1.Diversion of potential admission from the Arizona State Hospital, as appropriate;
  - 3.4.2.2.Coordination of the admission process with the Arizona State Hospital Admissions Office;
  - 3.4.2.3.Participation in the Arizona State Hospital treatment and discharge planning;
  - 3.4.2.4.Forwarding of available clinical and medical record information upon or shortly after admission; and
  - 3.4.2.5.Responding promptly to any other requested communication and/or collaboration with the Arizona State Hospital.
- 3.4.3. The TRBHA will make available and maintain community living arrangements, provide appropriate supports necessary to meet the individual needs, and ensure the appropriate discharge of persons with a serious mental illness from the Arizona State Hospital.

## **F. Member Complaints, Grievances and Appeals**

1. The TRBHA will ensure that Members are aware of their rights and how to file a complaint, grievance and/or appeal.
2. The TRBHA will work with each Member to attempt resolution of the matter at the lowest level possible.
3. Complaints: the TRBHA will develop and implement written internal procedures that guide the informal dispute resolution process including timeframes for resolution.
4. Grievances and appeals for Members who have not been determined to have a SMI
  - 4.1. For any adverse action taken by AHCCCS (e.g. denial of prior authorization for an AHCCCS-covered service), the TRBHA will assist the Member in filing and pursuing any applicable grievance and/or appeal.

4.2. For any adverse action taken by the TRBHA (e.g. denial of a block grant service), the TRBHA will follow the procedures described in Arizona Administrative Code Title 9, Chapter 34, Article 2 as though the TRBHA is a “Contractor” and the Member is an “Enrollee” as defined in that Article

5. Grievances and appeals for Members who have been determined to have a SMI

5.1. For any adverse action taken by AHCCCS (e.g. denial of prior authorization for an AHCCCS-covered service), the TRBHA will assist the Member in filing and pursuing any applicable grievance and/or appeal.

5.2. For any adverse action taken by the TRBHA (e.g. denial of SMI eligibility):

5.2.1. The TRBHA will comply with the appeals, grievances and requests for investigation processes described in Arizona Administrative Code Title 9, Chapter 21, Article 4.

5.2.2. The TRBHA will assist AHCCCS in processing SMI grievances and appeals by ensuring its staff comply with procedural requirements including, but not limited to, the provision of required notices to persons with a serious mental illness, participating in an investigation, providing requested documents, participating in informal conferences or administrative hearings, as necessary.

5.3. AHCCCS will work collaboratively with the TRBHA in identifying any actions to be taken resulting from an SMI grievance or appeal.

## G. Quality Management

1. The TRBHA will institute processes to assess, plan, implement and evaluate the quality of care and quality of service provided to Members. The TRBHA must identify quality of care concerns and accept quality of care referrals from any source.

2. The TRBHA will work with AHCCCS Clinical Quality Management (“CQM”) on reporting and performance improvement activities.

2.1. The TRBHA will inform AHCCCS within one (1) calendar day of its knowledge of high profile incidents/accidents involving Member(s). These high-profile incidents/accidents include any situation or occurrence that involves a Member, behavioral health provider, and/or the TRBHA that has resulted or has the potential to result in media attention/involvement.

2.2. All reports of incident/accident/death, including incidents of abuse, neglect, exploitation, healthcare-acquired conditions and unexpected deaths for all Members must be forwarded to AHCCCS-CQM. AHCCCS and the TRBHA may work collaboratively to investigate and resolve the report.

2.3. The TRBHA will assist AHCCCS in tracking and trending, and in providing assistance to Members in a timely manner, when there are quality of care or quality of service concerns.

- 2.4. The TRBHA will actively participate in data collection and analysis in partnership with AHCCCS. Information may be shared among AHCCCS, the Regional Behavioral Health Authorities, and the TRBHAs to improve coordination of care throughout AHCCCS.
- 2.5. The TRBHA will assist AHCCCS-CQM, as needed, in the process to provide resolution of any quality of care issues. Member and system resolutions may occur independently from one another.
3. The TRBHA will coordinate with AHCCCS when Members placed in facilities must be relocated due to quality of care or quality of service concerns.
4. Behavioral Health Recipient Satisfaction Survey: The TRBHA will actively participate in the development and implementation of the annual satisfaction survey.
  - 4.1. AHCCCS and the TRBHA will work collaboratively to develop TRBHA-specific surveys.
  - 4.2. There are two surveys that will be implemented: 1) an Adult Member Survey and, 2) a Youth Services Survey for Families
  - 4.3. The TRBHA will use findings from the Satisfaction Survey to improve care for Members.
  - 4.4. Upon request, the TRBHA will send completed member surveys to AHCCCS. The TRBHA will analyze and report the results of the member surveys to AHCCCS.

#### **H. Communication with Members, Members' Families, Stakeholders and Providers**

1. The TRBHA will be proactive in communicating information to Members, Members' families, stakeholders and providers to foster a community that understands the behavioral health delivery system. Such communication will include:
  - 1.1. How to access services, including emergency behavioral health/crisis services;
  - 1.2. What covered behavioral health services are available;
  - 1.3. Information on prevention and treatment of behavioral health problems;
  - 1.4. Customer service contact information, for both the TRBHA and AHCCCS;
  - 1.5. Information pertaining to new initiatives, projects, programs, and/or opportunities within the behavioral health system; and
  - 1.6. Information describing the AHCCCS registered-provider network.

2. Upon request, the TRBHA will assist AHCCCS in the dissemination of information to Members prepared by the federal government or AHCCCS. The cost of disseminating and communicating information to Members will be borne by the TRBHA.
3. All advertisements, publications, and printed materials which are produced by the TRBHA that refer to AHCCCS-covered services will state that such services are funded through AHCCCS.
4. Communications with Members

#### 4.1. Written Communication

- 4.1.1. The TRBHA will educate Members about covered behavioral health services and where and how to access services. Upon request, all materials created will be shared with AHCCCS.
- 4.1.2. Member Handbook.
  - 4.1.2.1. The TRBHA will provide each Member with a Member Handbook based on a template provided by AHCCCS that the TRBHA may adapt with TRBHA-specific information.
  - 4.1.2.2. The Member Handbook will be reviewed and updated by the TRBHA at least annually.
  - 4.1.2.3. The Member Handbook will be provided to Members within ten (10) days of receiving a first service.
  - 4.1.2.4. The TRBHA's updated Member Handbook must be provided to all Members on an annual basis
- 4.1.3. Other information.
  - 4.1.3.1. Written material will contain easily understood language and format. The TRBHA will make every effort to ensure that all information prepared for distribution to behavioral health recipients is written in easily understood language.
  - 4.1.3.2. When there are program changes, written notification will be provided to the affected persons at least thirty (30) days before implementation.
  - 4.1.3.3. All informational materials intended for distribution to Members will be reviewed for accuracy by the TRBHA.

4.2. Oral Interpretation Requirements: the TRBHA will make oral interpretation services available free of charge to all persons enrolled with AHCCCS based on eligibility for federally-funded services. This applies to all non-English languages, not just those that the TRBHA identifies as prevalent.

#### 5. Written Translation Requirements

5.1. All materials will be translated into another language when the TRBHA is aware that the other language is primarily spoken by three thousand (3,000) individuals or ten percent (10%), whichever is less, of behavioral health recipients in the service area who also have Limited English Proficiency (LEP).

5.2. All vital material should be translated into another language when the TRBHA is aware that the other language is spoken by one thousand (1,000) or five percent (5%), whichever is less, of behavioral health recipients in the service area who also have LEP. Vital materials include, at a minimum, notice for denials, reductions, suspensions or terminations of services and consent forms.

5.3. All written notices informing persons of their right to interpretation and translation services will be translated when the TRBHA is aware that one thousand (1,000) or five percent (5%), whichever is less, of the behavioral health recipients in the service area speak that language and have LEP.

5.4. Written materials will be available in alternative formats for the visually impaired.

5.5. The TRBHA will inform all behavioral health recipients that information is available in alternative formats and how to access those formats.

## 6. Communications with Members' Families, Stakeholders, and State Agencies

6.1. The TRBHA will, at a minimum, make available the following general written information:

- 6.1.1. Where and how to access behavioral health services including emergency behavioral health/crisis services;
- 6.1.2. Information on the family members' role in the assessment and treatment for behavioral health recipients;
- 6.1.3. Generic information on the treatment of behavioral health problems;
- 6.1.4. Any limitations in involving family members or providing Members' information for adult persons who do not want information shared with family members;
- 6.1.5. Customer service telephone numbers and hours of operation;
- 6.1.6. How to identify and contact a behavioral health recipient's Acute Health Plan and Provider Coordinator(s) (to the extent applicable to TRBHA), and
- 6.1.7. Covered behavioral health services.

6.2. The TRBHA will give the above stated written materials to providers to distribute to family members.

## 7. Member Information to Family Members

7.1. The TRBHA will encourage adult persons to include family members in the assessment and treatment for Members, unless it is contraindicated by family circumstances.

7.2. The TRBHA will ensure that information regarding Members is shared in accordance with confidentiality and HIPAA rules and policy as outlined in Federal, State and Tribal law.

## 8. Web Posting/ Online Media

8.1.The TRBHA will maintain a website that is up to date, informative, relative, and user friendly. The website will be organized to allow for easy access of information by behavioral health recipients, family members, providers and stakeholders.

8.2.The website will contain at a minimum the following information or links:

- 8.2.1. How to access behavioral health services, including crisis contact information;
- 8.2.2. Member Handbook;
- 8.2.3. Customer service contact information for the TRBHA and AHCCCS;
- 8.2.4. TRBHA's hours of operation; and
- 8.2.5. Information for advocacy organizations, including advocacy for family members.

## **I. Outreach**

1. The TRBHA will conduct outreach activities to inform persons regarding the availability of behavioral health services.
2. Outreach activities will include, but are not limited to:
  - 2.1.Participation in local health fairs, or health promotion activities;
  - 2.2.Involvement with local school districts;
  - 2.3.Routine contact with AHCCCS Health Plan Behavioral Health Coordinators and/or primary care providers (PCPs); and/or Indian Health Services;
  - 2.4.Publication and distribution of informational materials;
  - 2.5.Liaison activities with local and county jails, Arizona Department of Corrections, Arizona Department of Juvenile Corrections, and Tribal jails and detention centers;
  - 2.6.Routine interaction with agencies that have contact with substance abusing pregnant women;
  - 2.7.Development and implementation of outreach programs that identify persons with co-morbid medical and behavioral health disorders, persons with co-occurring developmental disabilities and behavioral health disorders, and those who may be seriously mentally ill within the TRBHA 's service area, including persons that reside in jails, homeless shelters or other settings; and
  - 2.8.Providing information to mental health advocacy organizations.
3. Family Partnership and Leadership
  - 3.1.The TRBHA will make a good faith effort to have genuine representation of peers, family members and youth who receive services in policy making and leadership roles (*e.g.* roles or membership on Boards of Directors, committees and/or advisory groups which develop and implement programs, policies, and quality management activities).

3.2.The TRBHA will utilize family members, peer-run, family-run, and parent-support organizations to provide technical assistance, training, coaching and support to peers, family members and youth who assume leadership roles within the behavioral health system (i.e. roles or membership on Boards of Directors and advisory groups which develop and implement programs, policies, and quality management activities).

3.3.If no peer-run, family-run or parent support organizations exist or have a presence in a certain geographical region, then the TRBHA and providers will work to strengthen or establish new formal relationships with these organizations.

4. Outreach activities will include dissemination of information to the general public, other human service providers, county, state and/or tribal governments, school administrators and teachers and other interested parties regarding behavioral health services available to eligible persons.

#### **J. Key Personnel and Staff Requirements**

1. The TRBHA will have a sufficient number of personnel, capable of and devoted to the successful accomplishment of work to be performed under this Agreement based on availability of funding. The TRBHA will ensure that all staff have appropriate training, education, experience, orientation, credentialing and the appropriate licenses, as applicable, to fulfill the requirements of their positions.

2. Key Personnel.

2.1.The TRBHA will assign a specific individual or individuals to the following key positions:

2.1.1. Director, who has ultimate responsibility to oversee the management of, and adherence to, requirements set forth in this Agreement.

2.1.2. Chief Medical Officer, who is a licensed physician in any state, board-certified in psychiatry, and will be actively involved in all major clinical programs and quality management components, and will ensure timely medical decisions.

2.1.3. Care Coordination Administrator: a registered nurse or individual with a Master's degree in health services, health care administration, or business administration if not required to make medical necessity determinations. The primary functions of the Care Coordination Administrator are:

2.1.3.1.Develop, implement and monitor the provision of care coordination, care management and case management functions; and

2.1.3.2.Monitor, analyze and implement appropriate interventions based on utilization data provided by AHCCCS, including identifying and correcting over or under utilization of services.

2.2.The TRBHA agrees that, once assigned to work under this Agreement, removal of Key Personnel will require written notice to AHCCCS within seven (7) calendar days of the TRBHA learning about the intended or finalized resignation or termination.

2.3.If Key Personnel are not available for work under this Agreement for a continuous period exceeding thirty (30) calendar days, or are expected to devote substantially less effort to the work than initially anticipated, the TRBHA will notify AHCCCS within seven (7) calendar days, and will, subject to the concurrence of AHCCCS, replace the personnel with other personnel of substantially equal ability and qualifications.

### 3. Staff Requirements

3.1.The TRBHA will maintain organizational, managerial and administrative systems and staff capable of fulfilling all Agreement requirements.

3.2.In addition to the required Key Personnel listed above, at a minimum, the TRBHA will employ, contract with or assign staff to fulfill these identified functions:

3.2.1. Clinical Operations Administrator, who is responsible for clinical program development and oversight of personnel and services to children/adolescents, adults with serious mental illness, adults with substance use disorders and adults with general mental health conditions. Additionally, the Clinical Operations Administrator will oversee vocational/employment and housing.

3.2.2. Prevention Services Administrator, the TRBHA will designate a lead prevention services administrator who will serve as the primary liaison to AHCCCS. The TRBHA will have representation in all AHCCCS-facilitated Prevention Administrator meetings.

3.2.3. Financial Manager, who is responsible for accurate and timely submission of financial reporting requirements.

3.2.4. Quality Management Administrator, who is responsible for oversight of the quality management requirements of the Agreement and coordinates with the AHCCCS-CQM.

3.2.5. Customer Services Administrator, who coordinates communications with eligible and enrolled persons and acts as, or coordinates with, advocates, providers and others to resolve member/SMI grievances.

3.2.6. Information Systems Administrator, who is responsible for oversight of the management information systems requirements of the Agreement.

3.2.7. Quality Improvement Specialist, who will be a Certified Professional in Healthcare Quality (CPHQ) or have comparable education and experience in data and outcomes measurement; be responsible for improving clinical quality performance measures; develop and implement performance improvement projects; utilize data to develop intervention strategies to improve outcomes; and report quality improvement/performance outcomes.

3.2.8. Care Coordinator(s), who assess the level and type of care needed and develop a care plan, are responsible for starting and ongoing implementation of the care plan, and coordinate the efforts of key support systems.

3.3.An individual may fulfill more than one Staff Requirement function so long as that individual can meet all of the duties required of each function required by this Agreement.

4. The TRBHA will maintain the following points of contact:

- 4.1. Interagency Liaison Contact, who will be a point of contact regarding coordination of care with AHCCCS Health Plans, Regional Behavioral Health Authorities (RBHAs), State and Tribal Agencies.
- 4.2. Child Welfare System Expert, who is an expert in the requirements of the Pascua Yaqui Tribe and Arizona child welfare systems, as applicable, and the special needs of children taken into the care and custody the Arizona Department of Child Safety, the Pascua Yaqui Department of Social Services, and the special needs of adopted children. This expert will assist the TRBHA in designing, implementing and coordinating care for Members.
- 4.3. Immediate Jeopardy (IJ) contact, who will be a point of contact responsible for communicating with AHCCCS to coordinate the care of individuals enrolled with the TRBHA during cases of an Immediate Jeopardy (e.g. fires or other public emergency situations). The contact person(s) who is (are) designated by the TRBHA will be accessible 24 hours a day, seven days a week to work with AHCCCS and/or other governmental agencies on urgent issue resolutions. These staff person(s) will have 1) access to information necessary to identify members who may be at risk and their current health/service status, 2) ability to initiate new placements/services, and 3) availability to perform status checks at affected facilities and potentially conduct ongoing monitoring, if necessary. The TRBHA will supply AHCCCS with the contact information for these staff persons, such as a telephone number, to call in these urgent situations.

#### **K. Management Information System**

1. The TRBHA will maintain a management information system that meets AHCCCS data processing and interface requirements as outlined in this Agreement and in the following documents incorporated by reference:
  - 1.1. Client Information System Technical Specifications Manual;
  - 1.2. CIS File Layout Specifications Manual;
  - 1.3. AHCCCS Program Support Policies and Procedure Manual; and
  - 1.4. The Demographic and Outcome Data Set User Guide (DUG)
2. The management information system will be capable of sending and receiving information to and from AHCCCS and capable of receiving information from service providers. All electronic data submitted will be encrypted per HIPAA privacy security requirements. The TRBHA will have a sufficient number of management information system personnel to support the maintenance and functioning of the management information system. These personnel will have management information system technical knowledge as well as knowledge of health care or behavioral health delivery systems knowledge.
3. If the TRBHA plans to make any modifications that may affect any of the data interfaces, it will first provide AHCCCS the details of the planned changes, the estimated impact upon the

interface process, and unit and parallel test files. The TRBHA will allow sufficient time for AHCCCS to evaluate the test data before approving the proposed change. The TRBHA will also notify AHCCCS in advance of the exact implementation date of all changes so AHCCCS can monitor for any unintended side effects of the change.

4. AHCCCS will provide the TRBHA at least ninety (90) days of notice prior to a system change unless it has been determined that the change is immediately needed and vital to system operations.
5. The TRBHA will identify staff who will utilize the PMMIS system, the SMI Grievance and Appeals database, the AHCCCS FTP Server, the AHCCCS Client Information System and all other AHCCCS systems that require user registration and monitoring of continued access and discontinuation of access rights of the TRBHA's staff.

## **II. FINANCIAL PROVISIONS**

### **A. Payments to the TRBHA (General Requirements for All Funding Sources)**

1. AHCCCS will provide to the TRBHA a document detailing the amounts to be paid to the TRBHA by funding source (the "Allocation Schedule" or "Payment Report"). Any deviation from the Allocation Schedule must be approved by AHCCCS in writing. AHCCCS will make payments to the TRBHA in compliance with the Allocation Schedule.
2. Payments are conditioned upon the rights and obligations of this Agreement and the availability to AHCCCS of funds authorized and appropriated by the State Legislature for expenditure in the manner and for the purposes stated in this Agreement. AHCCCS or the State will not be liable for any purchase(s) entered into by the TRBHA in anticipation of such funding.
3. Payments made by AHCCCS to the TRBHA are conditioned upon receipt by AHCCCS of applicable timely, accurate and complete reports, documentation and any other information due from the TRBHA, unless prior written approval waiving such requirement(s) is obtained from the AHCCCS Director or designee. If the TRBHA is in any matter in default in the performance of any material obligation under the Agreement, including in the process of administrative appeal, arbitration, or if financial, compliance or performance audit exceptions are identified, AHCCCS may, at its sole option and in addition to other available remedies, either adjust the amount of payment or withhold payment until satisfactory resolution of the default or exception. The TRBHA will have the right to 30 days written notice of AHCCCS' action in adjusting the amount of payment or withholding payment. Under no circumstances will AHCCCS authorize payments that exceed an amount specified in this Agreement without an approved written amendment to the Agreement. AHCCCS may withhold final payment to the TRBHA until all final reports and deliverables are received.
4. The practices, procedures and standards specified in and required by the State of Arizona Accounting Manual (<http://www.gao.az.gov/publications/SAAM>) and any Uniform Financial Reporting Requirements will be used by the TRBHA in the management, recording and reporting of Agreement funds received from AHCCCS and in producing audited financial statements.

## 5. Revenue and Expense Report

- 5.1. AHCCCS will provide the TRBHA with a form entitled "Revenue and Expense Report" that will include a "Disclosures and Adjustments" page/tab. This Report will correlate with the funding sources outlined in the Allocation Schedule.
  - 5.2. The TRBHA will complete the Revenue and Expense Report on an accrual basis and submit it to AHCCCS-DFSM no later than sixty (60) days after the end of each quarter.
  - 5.3. Reclassifications, adjustments, titles of positions and number of Full-Time Equivalents funded with Title XIX/XXI administrative funds, and any rationale for over/under spending should be noted on the Disclosures and Adjustments page/tab. The TRBHA will disclose adjustments to prior years and prior months in the current year.
6. Funding received through this agreement will be retained by the TRBHA to be used for the sole purpose of providing services required by this Agreement. The TRBHA will provide AHCCCS with a quarterly report detailing all activities of the fund (account) as described in the Chart of Deliverables.
  7. AHCCCS recognizes that interim financial statements are based on information available at the end of the reporting period, which may be incomplete. Revisions to a prior period will invalidate the previously submitted report.
  8. If applicable, the TRBHA will provide AHCCCS with a copy of its most recent Indirect Cost Agreement by October 1 of each year. The TRBHA agrees to cap indirect costs at twenty percent (20%).
  9. The TRBHA will have a system to produce complete, timely, reliable and accurate financial records and reports in accordance with the following requirements for financial reporting:
    - 9.1. The TRBHA will design and implement its financial operations system and reports to ensure compliance with Generally Accepted Accounting Principles, Government Auditing Standards and, as applicable, 2 C.F.R. Parts 200 and 300, and 45 C.F.R. Part 75.
    - 9.2. The TRBHA will submit a quarterly Certification Statement signed and dated by the TRBHA's chief financial officer (attached hereto as Exhibit 1).
    - 9.3. The TRBHA will submit annual audited financial statements to AHCCCS-DFSM no later than nine (9) months after the end of the state fiscal year. If the TRBHA received \$750,000.00 or more during the state fiscal year, an audit conducted pursuant to 2 C.F.R. Part 200, Subpart F is required. These audited financial statements must be prepared by an independent auditor and include supplemental schedules and audit opinions.
  10. Requests for extension of reporting deadlines will be submitted in writing and must be received by AHCCCS prior to the report due date. Approvals for extension are valid only if issued in writing by AHCCCS.

11. In accordance with A.R.S. § 35-190, State General Funds are appropriated by the State Legislature and must be expended (based on dates of service) by June 30 of each year at both the TRBHA and subcontractor levels.

11.1. The TRBHA and its subcontractors may not defer State General Funds.

11.2. Goods and/or services ordered by June 30 but received on or after July 1 may generally be charged to the previous state fiscal year if all three of the following conditions are met:

11.2.1. The expenditure is valid for the previous state fiscal year;

11.2.2. The contractual liability related to the claim was created on or before June 30; and

11.2.3. When the invoice arrives, there must be sufficient spending authority available to make the payment.

11.3. No later than April 15 of each year, the TRBHA will provide AHCCCS-DFSM with a list of State General Funds, by funding source, that the TRBHA and its subcontractors will not expend by the end of the state fiscal year.

11.4. The TRBHA will return unexpended State General Funds to AHCCCS within fifteen (15) days of AHCCCS' request regardless of whether the TRBHA or a subcontractor holds those funds.

11.5. The TRBHA will notify its subcontractors of the requirements under this section.

12. The TRBHA will reimburse AHCCCS upon request, or AHCCCS may deduct from future payments to the TRBHA, any amounts determined by AHCCCS to represent:

12.1. Costs related to services which have been inaccurately reported;

12.2. Costs related to services that have not been provided;

12.3. Costs of services for which the TRBHA's books, records, and other documents are not sufficient to clearly confirm were used by the TRBHA to provide such services;

12.4. Costs of services sustained as a financial audit exception; or

12.5. Costs of services which have not been provided in accordance with applicable regulations, laws, policies and this Agreement, to include services which have been determined to be unnecessary.

13. "State fiscal year" means the period beginning with July 1 and ending June 30.

14. No profit is allowed under this Agreement. The TRBHA is under no obligation to deliver or pay for services unfunded by the Agreement. The TRBHA will manage allocated funds in a manner sufficient to enable to perform under the Agreement for the entire state fiscal year.

## 15. Costs and Payments

### 15.1. Applicable Taxes.

- 15.1.1. Payment of Taxes. The TRBHA will be responsible for paying all applicable taxes.
- 15.1.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 15.1.3. Tax Indemnification. The TRBHA will pay all Federal, state and local taxes applicable to its operation and any persons employed by the TRBHA. The TRBHA will hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation. The TRBHA will add these requirements to its contracts with subcontractors.
- 15.1.4. IRS W9 Form. In order to receive payment the TRBHA will have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

15.2. Availability of Funds for the Next State Fiscal Year. Funds may not presently be available for performance under this Agreement beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Agreement beyond the current state fiscal year until funds are made available for performance of this Agreement.

15.3. Availability of Funds for the Current State Fiscal Year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

- 15.3.1. Accept a decrease in price offered by the TRBHA; or
- 15.3.2. Cancel the Agreement.

## **B. Management of Title XIX/XXI Administrative Funding**

1. To determine the annual budget for the TRBHA, AHCCCS will take into account the number of staff performing work under the Agreement, their salaries, the time spent performing duties, caseload ratios, vehicle costs, Employee Related Expenses ("ERE"), and other indirect costs. The model may be updated yearly as new information becomes available. Based on the annual budget, AHCCCS will make monthly payments to the TRBHA in compliance with A.R.S. Titles 35, 36 and 41.
2. The TRBHA will submit a quarterly report by the 60<sup>th</sup> calendar day following the end of each quarter detailing the Title XIX Revenues and Expenditures to AHCCCS-DFSM.

The quarterly report will be used by AHCCCS to reconcile the monthly payments made during the quarter to the TRBHA. If there is an overpayment or underpayment, AHCCCS will adjust future payments to the TRBHA accordingly to make the account whole. Failure of the TRBHA to submit timely quarterly financial reports will result in payment delays to the TRBHA.

3. Any Title XIX/XXI administrative funds remaining subsequent to the state's fiscal year end will be used in accordance with this Agreement within 90 days. For funds not expended within 90 days after the state's fiscal year end, the TRBHA will present a plan for AHCCCS' approval describing its plan to utilize remaining funds within 180 days of the state's fiscal year end. The following year's revenue may be adjusted if the TRBHA does not provide a reasonable plan to spend remaining funds.
4. All funding received under this Agreement must be maintained in a separate fund (account). The TRBHA will provide AHCCCS with a quarterly report detailing all activities in the fund (account) as described in the Chart of Deliverables.

#### **C. Management of State General Funds for NTXIX Services**

1. At AHCCCS' request, the TRBHA will submit a Contractor Expenditure Report ("CER") with supporting documentation for reimbursement of State General Funds for NTXIX Services, Supported Housing, and Crisis.
2. Any State General Funds allocated for housing must be spent in accordance with an approved housing plan for individuals meeting the Seriously Mental Ill designation.
3. Mortgages and Financing of Property: AHCCCS will be under no obligation to assist, facilitate, or help the TRBHA secure the mortgage or financing if a TRBHA intends to obtain a mortgage or financing for the purchase of real property or construction of buildings on real property.

#### **D. Management of Federal Block Grant and other NTXIX Federal Funds**

1. The TRBHA will use SABG funds solely for planning, implementing and evaluating activities to prevent and treat substance abuse, and provide early intervention services for HIV and tuberculosis disease in high-risk substance users.
2. The TRBHA will use MHBG funds solely for services for adults determined to have a SMI and children determined to have a SED, and evidence-based practices for first episode psychosis.
3. The TRBHA will use other grant funding as allocated by AHCCCS for the purposes set forth in the applicable federal grant requirements.
4. The TRBHA will:
  - 4.1. Manage, record, maintain fiscal controls, and report federal grant funds in accordance with the practices, procedures, and standards in the State of Arizona Accounting Manual

("SAAM"), 2 CFR Parts 200 and 300, 45 C.F.R. Part 75, and applicable federal grant requirements;

4.2.No later than April 15 of each year, the TRBHA will provide AHCCCS-DFSM with a list of Block Grant Funds, by funding source, that the TRBHA and its subcontractors will not expend by the end of the state fiscal year.

4.3.Comply with all terms, conditions, and requirements of the SABG and MHBG Block Grants, including but not limited to:

- 4.3.1. Confidentiality of Alcohol and Drug Patient Records (42 C.F.R. Part 2);
- 4.3.2. Charitable Choice Provisions; Final Rule (42 C.F.R. Parts 54 and 54a);
- 4.3.3. Substance Abuse Prevention and Treatment Block Grant; Interim Final Rule (45 C.F.R. §§ 96.45, 96.51, and 96.120-121);
- 4.3.4. Health Omnibus Programs Extension Act of 1988, Subtitle E General Provisions, November 4, 1988 (P.L.100-607) (42 U.S.C. § 300ee-5);
- 4.3.5. Children's Health Act of 2000 (P.L. 106-310);
- 4.3.6. ADAMHA Reorganization Act of 1992 (P.L. 102-321); and
- 4.3.7. Public Health Service Act (includes Title V and Title XIX).

4.4.Report MHBG and SABG grant funds and services separately and provide information related to block grant expenditures to AHCCCS upon request.

4.5.Submit TRBHA and subcontractor expenditure data to AHCCCS consistent with the annual funding levels in the Allocation Schedule.

4.6.Manage the federal block grant funds during each fiscal year to make funds available for obligation and expenditure until the end of the fiscal year for which the funds were paid. When making transfers involving federal block grant funds, the TRBHA will comply with the requirements in accordance with the Federal Block Grant Funds Transfers Cash Management Improvement Act of 1990 and any rules or regulations promulgated by the U.S. Department of the Treasury including, 31 CFR Part 205, and the State of Arizona Accounting Manual (SAAM).

4.7.Not discriminate against non-governmental organizations on the basis of religion in the distribution of Block Grant funds.

4.8.Comply with prevention funds management;

4.9.Comply with all terms, conditions, and requirements for any federal grant funding as outlined in the Allocation Schedule.

5. The TRBHA's financial monitoring of SABG and MHBG funding must include:

5.1.Policies and procedures that outline internal monitoring of federal block grant requirements.

- 5.2. Notify relevant subcontractors of required sub-award information and Single Audit submission requirements. Non-Federal entities that expend \$750,000 or more in a year in federal awards will have a Single Audit conducted for that year in accordance with 2 CFR Part 200 Subpart F.
- 5.3. Maintain tracking tool to monitor receipt of Single Audits. At a minimum, the tool should contain the following information: Provider Name, Audit Received Date, Management Decision Letter Date, Audit Findings (Y/N) and Date Response/Corrective Action Plan Received.
- 5.4. Issue management decisions for audit findings as required by §200.521 Management decision.
- 5.5. Track grant funds, including Flex Funds (if applicable) and unexpended funds, for appropriate allocation by category, recoupment and/or return to AHCCCS.
- 5.6. Monitor grant activities to ensure SABG and MHBG funds are expended for authorized purposes.
- 5.7. Add to contracts with subcontractors that subcontractors must comply with 2 C.F.R. Part 200, Subpart F, and have internal policies and procedures related to SABG and MHBG.

### III. TERMS AND CONDITIONS

#### A. Agreement Administration and Operation

1. Offshore Performance of Work Prohibited: Any services that are described in the scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data will be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, 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.
2. Licenses: The TRBHA will maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the TRBHA.
3. Term of Agreement
  - 3.1. The term of the Agreement is from July 1, 2016, through June 30, 2021, unless otherwise terminated or extended by mutual agreement of the Parties in a duly authorized and executed amendment.

3.2.All Agreement extensions will be through written amendment executed by both Parties. The terms and conditions of any such extension will remain the same as the original Agreement, as amended.

#### 4. Agreement Changes

4.1.Amendments. The Agreement may be modified only through an Amendment within the scope of the Agreement. Changes to the Agreement, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the TRBHA are violations of the Agreement. Such changes, including unauthorized written Amendments will be void and without effect, and the TRBHA will not be entitled to any claim under this Agreement based on those changes.

4.2.Subcontracts. The TRBHA will not enter into any subcontract under this Agreement for the performance of any administrative function required by this Agreement without advance written notice to AHCCCS-DFSM. The TRBHA will clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The subcontract will incorporate by reference the terms and conditions of this Agreement. This section does not apply to subcontracts with behavioral health service providers.

4.3.Assignment and Delegation. The TRBHA will not assign any right nor delegate any duty under this Agreement without the prior written approval of AHCCCS-DFSM. AHCCCS will not unreasonably withhold approval.

#### 5. Agreement Interpretation

5.1.Governing Law. This Agreement will be interpreted under the applicable laws of the United States, State of Arizona, and the Pascua Yaqui Tribe. If any laws conflict, the laws of the United States will control.

5.2.Severability. The provisions of this Agreement are severable. Any term or condition deemed illegal or invalid will not affect any other term or condition of the Agreement.

5.3.No Parole Evidence. This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade will supplement or explain any terms used in this document and no other understanding either oral or in writing will be binding.

5.4.No Waiver. Either party's failure to insist on strict performance of any term or condition of the Agreement will not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

#### 6. Agreement Remedies

- 6.1. Notice and Opportunity to Cure. In the event of a breach of the Agreement, the non-breaching party must notify the breaching party of the breach in writing. If the breach is capable of cure, the non-breaching party must describe how the breach can be cured and identify a reasonable deadline by which any cure must be completed.
- 6.2. Corrective Action Plans. AHCCCS and the TRBHA may collaboratively develop a corrective action plan to address a breach of this Agreement. The TRBHA will implement the corrective action plan to bring performance into compliance in accordance with the corrective action plan, and within the timeframes agreed to by the TRBHA and AHCCCS.
- 6.3. Non-exclusive Remedies. The rights and the remedies of AHCCCS under this Agreement are not exclusive.
- 6.4. Technical Assistance. AHCCCS' provision of technical assistance to the TRBHA to assist in achievement of compliance with any relevant Agreement terms does not relieve the TRBHA of its obligation to fully comply with any relevant Agreement term or any other terms of this Agreement.
- 6.5. Right of Offset. AHCCCS will be entitled to offset against any sums due the TRBHA, any expenses or costs incurred by AHCCCS, or damages or sanctions assessed by AHCCCS concerning the TRBHA's non-conforming performance or failure to perform the Agreement.
- 6.6. Sanctions
- 6.6.1. AHCCCS reserves the right to impose financial sanctions if the TRBHA engages in any of the following conduct :
- 6.6.1.1. Material misrepresentation or falsification of information provided to AHCCCS;
  - 6.6.1.2. Material misrepresentation or falsification of information provided to an enrolled person, potential enrolled person, subcontractor or health care provider;
  - 6.6.1.3. Material noncompliance with quality of care or quality management requirements;
  - 6.6.1.4. Submitting incomplete or inaccurate reports, deliverables or other information requested by AHCCCS;
  - 6.6.1.5. Submitting reports, deliverables or other information requested by AHCCCS more than 180 days after the deadline for production; or
  - 6.6.1.6. Engaging in conduct which jeopardizes Federal Financial Participation or other federal funding.
- 6.6.2. AHCCCS will consider the severity of the violation to determine the amount of sanction. The amount of the sanction will be proportionate to the severity of the non-compliance action.
- 6.6.3. AHCCCS will provide written notice to the TRBHA specifying the amount of the sanction, the grounds for the sanction, the amount of funds to be withheld from the TRBHA's payments, the steps necessary to avoid future sanctions and the TRBHA's right to file a claims dispute to challenge the sanction.

6.6.4. The TRBHA will complete all necessary steps to correct the violation that precipitated the sanction. AHCCCS may impose additional sanctions, which may be equal to or greater than the sanction imposed for the unresolved violation, in the event the TRBHA fails to adequately correct the violation within established timeframes. Sanctions are not subject to the Notice and Opportunity to Cure provisions in A.6.1.

## 7. Agreement Termination

7.1. Cancellation for Conflict of Interest. AHCCCS may cancel this Agreement within three (3) years after Agreement execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the State is or becomes, at any time while the Agreement or an extension of the Agreement is in effect, an employee of or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement. The cancellation will be effective when the TRBHA receives written notice of the cancellation unless the notice specifies a later time.

7.2. Gratuities. AHCCCS may, by written notice, terminate this Agreement, in whole or in part, if the State determines that employment or a gratuity was offered or made by the TRBHA or a representative of the TRBHA to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing of the Agreement, an amendment to the Agreement, or favorable treatment concerning the Agreement, including the making of any determination or decision about Agreement performance. AHCCCS, in addition to any other rights or remedies, will be entitled to recover exemplary damages in the amount of three times the value of the gratuity offered by the TRBHA.

7.3. Suspension or Debarment. AHCCCS may, by written notice to the TRBHA, immediately terminate this Agreement if AHCCCS determines that the TRBHA 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. Submittal of an offer or execution of an Agreement will attest that the TRBHA is not currently suspended or debarred. If the TRBHA becomes suspended or debarred, the TRBHA will immediately notify AHCCCS.

7.4. Termination for Convenience. Upon thirty (30) days written notice to the other Party, either Party may terminate the Agreement, in whole or in part, without penalty or recourse will. The TRBHA will be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

7.5. Termination for Default. Subject to section A 6.1, in addition to the rights reserved in the Agreement, AHCCCS may terminate the Agreement in whole or in part due to the failure of the TRBHA to materially comply with any term or condition of the Agreement, or to make satisfactory progress in performing the Agreement. The

Procurement Officer will provide written notice of the termination and the reasons for it to the TRBHA.

7.6. In the event that the Agreement terminates for any reason, the Parties agree to collaborate on transitioning the care of any enrolled persons potentially affected by the termination within a reasonable period of time. The Parties agree to work together to ensure that such a transition occurs in an orderly manner and without significant disruption in services to enrolled persons.

8. **Sovereign Immunity:** Except as provided in section A.9.4.3.2 below, nothing in this Agreement will be construed as an express or implied waiver of either Party's sovereign immunity from suit in any forum or jurisdiction.

#### 9. Agreement Disputes and Arbitration

9.1. In the event of a dispute, claim or controversy ("Dispute") arising out of or related to this Agreement, the Parties agree that it is in their mutual best interest to meet as promptly as possible for the purpose of informally resolving said Dispute.

9.2. In the event that the Parties cannot resolve their Dispute informally after attempting to work in good faith toward resolution, the Parties agree that Disputes arising out of this Agreement will be administratively adjudicated in accordance with A.R.S. § 2903.01(b)(4), the relevant portions of Arizona's Administrative Procedures Act, and AHCCCS' rules pertaining to appeals and grievances, except that the TRBHA may elect to enter into binding arbitration to dispute a Director's Decision rather than file for a judicial review of an administrative decision.

9.3. After exhausting applicable administrative remedies, the Parties to this Agreement agree to resolve all Disputes arising out of or relating to this Agreement through binding arbitration as provided in the Federal Arbitration Act and A.9.4 below.

#### 9.4. Arbitration and Award

9.4.1. Upon notice by a Party to the other of the intent to arbitrate, the Dispute will be finally and exclusively settle by submission of such Dispute to the American Arbitration Association ("AAA") under its then prevailing procedural rules contained in the AAA's Commercial Arbitration Rules to the extent that such rules will not be interpreted to diminished, limit or void the limited waiver of sovereign immunity set forth in Section A.8 above or to increase the enforcement right of the Parties. Within ten (10) days after the notice of intent to arbitrate, each party will select one person to act as arbitrator and the two selected will select a third arbitrator within ten (10) days of their appointment. The third arbitrator will be a practicing attorney, actively engaged in the practice of law for at least ten (10) years and a member in good standing of the bar of the State of Arizona. Alternatively, the third arbitrator may be retired judge of the federal court or the trial court of the State of Arizona. At least one of the arbitrators will be knowledgeable with federal Indian law and one arbitrator will have AAA-acknowledged

expertise in the appropriate subject matter. By agreement of the parties, when the amount in controversy renders the cost of three arbitrators unreasonable, the parties may agree to select a single arbitrator to resolve a dispute. All arbitrators proceedings will be held in Maricopa County, or at such other place as will be agreed by the Parties

9.4.2. The award will be made within sixty (60) days of the filing of the notice of intent to arbitrate, and the arbitrators will agree to comply with the schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the majority of the Parties or by the majority of the arbitrators, if necessary. Any award rendered in any such arbitration proceeding will be final and binding upon all Parties to the proceeding.

9.4.3. Enforcement

9.4.3.1. Judgment upon any award rendered by the arbitrators may be entered only in the U.S. District Court for the District of Arizona.

9.4.3.2. For the purposes of this Agreement, and subject to the terms of this section, the Parties agree to a limited waiver of sovereign immunity from suit and consent to be sued on an arbitration award. The Parties agree that this section provides a limited waiver of sovereign immunity solely for the purpose of enforcing any arbitration award hereunder and for no other purpose.

9.5. AHCCCS may take any action described in the Financial Provisions and/or Sections A.6 or A.7 of these Terms and Conditions prior to initiating or engaging in any process described under Section A.9 of these Terms and Conditions. The TRBHA may use the process described under Section A.9 of these Terms and Conditions to appeal such an action.

## 10. Survival of Rights and Obligations after Agreement Expiration or Termination

10.1. Any provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement will survive termination or expiration of this Agreement and continue in full force and effect.

10.2. All representations and warranties made by the TRBHA under this Agreement will survive the expiration or termination hereof.

## B. Compliance

1. Reporting Fraud, Waste and Abuse. The TRBHA will report, in writing, all cases of suspected fraud, waste and/or abuse involving the programs administered by AHCCCS to the AHCCCS Office of the Inspector General ("OIG"). To report fraud, waste and/or abuse, the TRBHA will complete the AHCCCS "Referral for Preliminary Investigation" form and submit it to AHCCCS-OIG with a copy sent to AHCCCS-DFSM.

2. Records.

2.1. The TRBHA will retain all data and other "records" relating to the acquisition and performance of the Agreement for a period of five years after the completion of the

Agreement. The TRBHA will add this same requirement to its contacts with subcontractors.

2.2. All books and records will be maintained to the extent and in such detail as required by AHCCCS Rules and Policies. The AHCCCS records management guidelines are located at: <http://www.azahcccs.gov>. Records will include, but not be limited to, financial statements, case files (both hard copy and stored data), and other records specified by AHCCCS.

2.3. At any time during the term of this Agreement and five (5) years thereafter, the TRBHA's or any subcontractor's books and records will be subject to audit by AHCCCS and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Agreement or a subcontract. The TRBHA will make available, at all reasonable times during the term of this Agreement and the period set forth in in this section, any of its records for inspection, audit or reproduction by any authorized representative of AHCCCS, the State of Arizona or the Federal government.

2.4. The TRBHA will preserve and make available all records for a period of five (5) years from the date of final payment under this Agreement except as provided below:

2.4.1. If this Agreement is completely or partially terminated, the records relating to the work terminated will be preserved and made available for a period of five years from the date of any such termination.

2.4.2. Records that relate to grievances, disputes, litigation or the settlement of claims arising out of the performance of this Agreement, or costs and expenses of this Agreement to which exception has been taken by AHCCCS, will be retained by the TRBHA for a period of five years after the date of final disposition or resolution thereof.

2.4.3. Completed case files will be scheduled for archive shipment to AHCCCS, as defined by AHCCCS Policy and Procedures.

2.4.4. To the extent that the Agreement or applicable law require the disclosure of records to AHCCCS and/or the Federal government, such disclosure will be made at no cost to AHCCCS or the Federal government.

### 3. Audits and Inspections.

3.1. The TRBHA will cooperate with AHCCCS and/or the Federal government in any audit, review, investigation and/or request for information of the TRBHA and/or its subcontractors. In no event will this Agreement be construed to authorize any audit, review, investigation and/or request for information outside the scope of this Agreement.

3.2. Audits: AHCCCS may conduct periodic audits to confirm the TRBHA's and subcontractor(s)' compliance with applicable law and this Agreement. These audits include, but are not limited to:

#### 3.2.1. Annual Administrative Review

3.2.1.1. AHCCCS will conduct an Annual Administrative Review for the purpose of ensuring compliance with applicable law and this Agreement.

- 3.2.1.2. The Annual Administrative Review will be conducted to recommend improvements, monitor the TRBHA's progress toward implementing mandated programs and corrective action plans, and provide the TRBHA with technical assistance as necessary.
- 3.2.1.3. In preparation for the Annual Administrative Review, AHCCCS will work with the TRBHA to identify and request records needed for the Review, and to obtain a right of entry if an inspection is part of the Review.
- 3.2.1.4. AHCCCS will furnish a copy of the Annual Administrative Review Report to the TRBHA and give the TRBHA an opportunity to comment on any review findings. AHCCCS and the TRBHA will develop a Corrective Action Plan to correct any deficiencies identified in the Annual Administrative Review Report.
- 3.2.1.5. AHCCCS may conduct follow-up reviews to determine the TRBHA's progress in implementing the Corrective Action Plan.
- 3.2.2. Program Integrity Review
  - 3.2.2.1. AHCCCS-OIG and/or AHCCCS-DFSM may conduct audits of the TRBHA and/or its subcontractors without notice for the purpose of ensuring program integrity.
  - 3.2.2.2. Upon notice that an audit involves program integrity, the TRBHA will respond to electronic, telephonic or written requests for information within the reasonable timeframe specified by AHCCCS-OIG and/or AHCCCS-DFSM.
  - 3.2.2.3. Nothing in this subsection shall be construed to allow AHCCCS to enter Pascua Yaqui lands except as provided below in Section B.3.3.
- 3.3. Inspections: Should it be necessary for AHCCCS-OIG and/or AHCCCS-DFSM to conduct an onsite review of the TRBHA and/or any of its subcontractors, the TRBHA will cooperate with AHCCCS to obtain a right of entry from the Pascua Yaqui Tribe. If AHCCCS cannot obtain a right of entry from the Pascua Yaqui Tribe within a reasonable timeframe requested by AHCCCS, such failure will constitute a material breach of the Agreement and AHCCCS may terminate the Agreement.

### **C. Risk and Liability**

1. Indemnification. Each party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. The State of Arizona, AHCCCS, is self-insured per A.R.S. 41-621.
2. Should the TRBHA utilize a contractor(s) or subcontractor(s) to fulfill the terms of this Agreement, the indemnification clause between the TRBHA and its contractor(s) and subcontractor(s) will include the following:

To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless the Pascua Yaqui Tribe and the State of Arizona, and any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and its departments, agencies, boards, commissions, universities, , officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. 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 will, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Additionally on all applicable insurance policies, contractor and its subcontractors will name the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as an additional insured and also include a waiver of subrogation in favor of the State.

3. The TRBHA will add to its contract(s) with any non-governmental contractor(s) or subcontractor(s) performing services in performance of this Agreement that the contractor(s) or subcontractor(s) will comply with the Minimum Subcontract Provisions found on AHCCCS' website. The TRBHA has the discretion, based on the work performed by the TRBHA's contractor(s) or subcontractor(s), to determine which of the insurance provisions in the Minimum Subcontract Provisions apply to each of the TRBHA's contractor(s) or subcontractor(s)
4. Responsibility for Payments: The TRBHA will be responsible for issuing payment for services performed by the TRBHA's employees and will be responsible for and hold AHCCCS harmless for all claims whatsoever growing out of the lawful demands of employees, contractors, subcontractors, suppliers, or any other third party incurred in the furtherance of the performance of the Agreement. The TRBHA will, at AHCCCS' request, furnish satisfactory evidence that all obligations described under this subsection have been paid, discharged or waived.
5. Force Majeure.
  - 5.1. Except for payment of sums due, neither Party will be liable to the other nor deemed in default under this Agreement if and to the extent that such Party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government

authority; and other similar occurrences beyond the control of the Party declaring force majeure which such Party is unable to prevent by exercising reasonable diligence.

5.2. Force Majeure will not include the following occurrences:

- 5.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 5.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
- 5.2.3. Inability of either the TRBHA or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

5.3. If either Party is delayed at any time in the progress of the work by force majeure, the delayed Party will notify the other Party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and will specify the causes of such delay in such notice. Such notice will be delivered or mailed certified-return receipt and will make a specific reference to this article, thereby invoking its provisions. The delayed Party will cause such delay to cease as soon as practicable and will notify the other party in writing when it has done so. The time of completion will be extended by Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed Party from performing in accordance with this Agreement.

5.4. Any delay or failure in performance by either party hereto will not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

#### **D. Documents Incorporated by Reference**

1. In addition to any policies specifically identified in this Agreement, the following policies are incorporated by reference into this Agreement:
  - 1.1. AHCCCS Contractor Operations Manual Policy 448, Housing for Individuals Determined to Have a Serious Mental Illness
  - 1.2. AMPM Policy 320-O, Service Planning, Assessments, and Discharge Planning;
  - 1.3. AMPM Policy 320-P, Serious Mental Illness Eligibility Determination;
  - 1.4. AMPM Policy 320-R, Special Assistance for Persons Determined to Have a Serious mental Illness;
  - 1.5. AMPM Policy 320-T, Special Populations;
  - 1.6. AMPM Policy 450, Out-of-State Placements for Children or Young Adults for Behavioral Health Treatment; and
  - 1.7. AMPM Policy 1040, Outreach, Engagement, Re-Engagement and Closure for Behavioral Health.
2. To the extent a policy refers to another policy, only the policy referred to in this Agreement is incorporated by reference.

3. If AHCCCS amends a policy incorporated by reference into this Agreement, the TRBHA and AHCCCS agree to enter into good-faith negotiations to incorporate the updated policy into this Agreement. The TRBHA agrees not to unreasonably withhold its agreement to follow the policy as amended.