

FISCAL YEAR 2015

PROVIDER AGREEMENT

MENTAL HEALTH AND ADDICTION SERVICES

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**FISCAL YEAR 2015
PROVIDER AGREEMENT
Mental Health and Addiction Services**

This agreement is made and entered into at Toledo, Ohio effective as of the 1st day of **July, 2014** by and between the **ALCOHOL, DRUG ADDICTION AND MENTAL HEALTH SERVICES BOARD KNOWN AS MENTAL HEALTH AND RECOVERY SERVICES BOARD OF LUCAS COUNTY** whose principal place of business is **701 Adams Street, Suite 800, Toledo, Ohio 43604** (the “**Board**”) and _____ whose principal place of business is _____ (the “**Agency**”)

RECITALS

A. The Board is a community Board of Alcohol, Drug Addiction and Mental Health Services formed pursuant to Ohio Revised Code Section 340.02 serving residents of Lucas County, Ohio and is authorized to enter into contracts with public and private agencies for the provision of alcohol, drug addiction and mental health services, to approve methods of payment for such services in accordance with guidelines issued by Ohio Mental Health and Addiction Services, and to establish such rules, operating procedures, and standards as are necessary to carry out its purposes.

B. The agency is an Ohio nonprofit corporation, certified by Ohio Mental Health and Addiction Services that provides the types of services described in this agreement.

C. The Board and the Agency desire to enter into an agreement for the provision of services or the performance of certain duties and responsibilities to the residents of Lucas County upon the terms and conditions set forth below.

STATEMENT OF AGREEMENT

In consideration of their mutual promises the parties agree as follows:

ARTICLE I – DEFINITIONS

1.1 “Board Policies” are the policies, procedures, protocols, rules and regulations that have been adopted by the Board, and any such items that are subsequently adopted by the Board of which the Agency has received written notice in accordance with Article 3.1 (c) below.

1.2 “Client” is an Eligible Person to whom the Agency provides Services under this Agreement, and for whom a formal case file has been opened.

1.3 “Eligible Person” is a person who meets the standards of eligibility established by the Board from time to time for receiving eligible services funded through the Board. The current eligibility guidelines (Board Policy) are set forth in Attachment 1.

1.4 “Enrolled Client” is an Eligible Person whose eligibility for services has been verified by the Board staff for Enrollment functions on behalf of the Board and for whom the Agency provides services.

1.5 “Fiscal Year” is the period from July 1, 2014 to June 30, 2015.

1.6 “Medically Necessary Service” is a Service that is: (i) appropriate for the care, diagnosis or treatment of an Eligible Person; (ii) provided in the least costly medically appropriate setting based on the severity of illness and intensity of service required; (iii) not solely for the Eligible Person’s convenience or that of a health care professional; and (iv) within standards of practice within the community.

1.7 “Resident” is a person whose residence as defined in O.R.C. 5122.01(S), is in Lucas County as may be modified by “Guidelines and Operating Principles for Residency Determinations among CMH/ADAS/ADAMHS Boards”, issued by Ohio Mental Health and Addiction Services.

ARTICLE II – SERVICES

2.1 General. The Agency agrees to provide Medically Necessary Services required hereunder to Eligible Persons, in accordance with the terms and conditions of this Agreement. This Agreement applies to services to persons not eligible for Medicaid services under Title XIX of the Social Security Act. Clients who are eligible for Medicaid and who have reached their benefit limitations are not eligible for services under this contract. Agency shall not materially change any service provided under this Agreement without prior written consent of the Board.

2.2 Legal Proceedings. The Agency will be responsible for providing attorneys to represent the Board in legal proceedings under O.R.C. Chapter 5122, “Hospitalization of Mentally Ill”, with respect to their Clients. The Board will annually designate attorneys based upon the Agency’s recommendations, provided the Agency notifies

the Board of the name, address and phone number of the recommended attorney. The Agency shall bear the expense of the attorney.

2.3 Additional Duties. The Parties shall perform such other obligations as are set forth in the Schedule of Additional Duties and Agreements that is attached as Attachment 3.

ARTICLE III – STANDARDS

3.1 Compliance with Certain Matters. All Services shall be performed in compliance with the applicable requirements of:

- (a) accepted standards of professional practice;
- (b) the Board's Community Plan as submitted to Ohio Mental Health and Addiction Services;
- (c) Board Policies, provided that as to any new policy or change in policy which has an effect on the Agency, the Board has provided written notice of the policy or change at least 60 days prior to adoption, and at least 120 days prior to the date of enforcement;
- (d) the Articles of Incorporation, Code of Regulations, policies and procedures of the Agency;
- (e) its Agency Service Plan;
- (f) all requirements of other entities that provide funding for the programs under which the Agency receives payment;
- (g) the "Statement of Assurances", Attachment 4; and
- (h) Ohio Revised Code (ORC) 5122.31 – mental health confidentiality, ORC 5119.27 – alcohol and other drug confidentiality, Ohio Administrative Code 5122-27-09 – confidentiality & security of clinical records, 42 CFR Part 2- federal alcohol & other drug confidentiality, and 45 CFR 164.502- federal Privacy, Security and Enforcement regulations: Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations; The Health Information Technology for Economic and Clinical

Health Act (HITECH) and HIPAA modifications of 2013 known as the Omnibus Rule.

3.2 Nondiscrimination. The Agency shall not discriminate in the provision of services on the basis of race, color, religion, national origin, age, marital status, disability, pregnancy, military/veteran status, genetic information, sexual orientation or other federal, state or local protected class. The Agency shall ensure that Services are not denied to an Eligible Person because of:

- (a) behavior that is symptomatic of the illness or condition that causes an Eligible Person to need Services under this Agreement unless the behavior is such as to make other types of Services more appropriate, in which case the person may be transferred by an Appropriate Transfer;
- (b) refusal by the person or the person's family to accept other services offered by the Agency, provided that this shall not require the Agency to provide services in a manner that is clinically inappropriate;
- (c) the client's inability or unwillingness to pay for such services. This provision applies only to those persons who meet severe and persistent mental illness, youth with serious emotional disturbance, co-occurring disorder with a severe and persistent mental illness and drug and alcohol diagnosis and pregnant women eligibility criteria.
- (d) the extent of Medically Necessary Services that the Client may require; or
- (e) a failure by the Client's family to be cooperative, provided that any required informed consent to treatment has been obtained.

Services to any Client shall not be terminated until the Agency has taken reasonable steps to meet anticipated needs of the Client for related services.

3.3 Staffing.

3.3.1 ACCO. If an Agency provides mental health services, the Agency shall appoint an Agency Chief Clinical Officer (ACCO) who meets the requirements of O.R.C 5122.01 (k). The ACCO shall be responsible for the supervision of diagnostic and treatment services provided under this Agreement. The ACCO shall agree to perform all services in compliance with this Agreement, and in accordance with Board Policies governing reporting to and coordination with the Board Chief Clinical Officer and such other persons as the Executive Director of the Board shall designate.

3.3.2 Equal Employment Opportunity. The Agency shall comply with all laws and regulations governing discrimination in employment that are applicable to Board contractors, and shall have a plan of affirmative action for the provision of equal employment opportunities that complies with requirements applicable to Board contractors. In addition, the parties agree to continue their efforts to achieve diversity in accordance with the Board's Affirmative Action Program policy.

3.3.3 Legal Compliance. The Agency shall comply with all laws and regulations of federal, state, county and local agencies and authorities, including but not limited to such laws and regulations and state agency directives that are applicable to the Agency because it is a Board contractor.

3.3.4 Hazardous Procedures. Except as otherwise permitted by law, no mental health or addiction treatment services will be provided without the informed consent of the client or the client's legal representative.

ARTICLE IV – INFORMATION AND REPORTS

4.1 General. The Agency shall provide such information and reports as are required by law and Board Policies, and such other information as the Board reasonably determines to be necessary to carry out its functions. Such information shall include individual Client records to the extent permitted by law. The Board will provide no less than 60 days advance notice of any changes to the format of Board required reports. The Board, or its designated agent, shall be granted electronic access to Agency databases concerning financial and clinical data relating to Clients to the extent permitted by law.

The Agency shall permit the Board or its designee to electronically transmit data (e.g. via the Board's FTP server or modem) to the Agency concerning a Eligible or Enrolled Person's right to obtain Services, including but not limited to information concerning the person's status as a Eligible, or Enrolled Person, and Medical Necessity determinations. The Agency shall take all reasonable steps necessary to facilitate such electronic access to, and ability to transmit information to, the Agency by the Board or its designated agent. Provided, this provision shall not be construed to permit the Board to directly enter data into the Agency's database. If the Board requests the Agency to compile data which is not specifically called for by this Agreement or which is not required for the provision of services under this Agreement, the Agency will make a reasonable effort to provide such information.

However, if the collection or compilation of such additional data requires the Agency to incur additional costs, the Agency will inform the Board of the anticipated costs and time involved and if the Board deems the information necessary, it will reimburse the Agency for its additional expenses.

4.2 Performance Improvement. The Agency agrees to:

Collect and provide the Board with Agency performance data, in the prescribed Board format and time frame for all services, aggregated by Medicaid and Non-Medicaid, for Children, Adults, and supportive services as indicated in Attachment 3.

4.3 Specific Items. The Agency shall provide the documents and reports listed on Attachment 4 in accordance with the time requirements stated in that Attachment.

4.4 Claims Processing. Claims must be submitted by using MACSIS.

4.5 Untimely Reports. If the Agency fails to provide any report specified on Attachment 4 to the Agreement within the time frame specified therein, or fails to provide any other report due under this Agreement within 14 days of the date due, the Executive Director of the Board may withhold payment of any funds otherwise due to the agency ten days following written notice to the Agency until the report is submitted.

4.6 Reports of Claims.

- (a) Notification of Claims Against Agency.** In the event that any person alleges in writing, either by filing a lawsuit or otherwise, that the Agency, an employee of the Agency, or a contractor of the Agency that provides any Services to Clients, acted or failed to act in a manner that violated the party's duties to any person in any manner whatsoever, whether by negligence or otherwise, the Board shall be notified in writing of such claim within seven (7) days of the assertion of such claim, whether or not the affected person was an Eligible Person. The Agency shall enter into agreements with its contractors that provide Services to Clients requiring them to notify the Agency of any such claims. Provided, however, this Article shall not require the Agency to give notice to the Board of internal employee grievances or appeals or administrative charges filed by employees which do not relate to client services. Provided further, this

Article shall not modify the obligations of the Agency to submit reportable incidents in accordance with Board's Incident Notification policy.

- (b) Notification of Claims by Agency Against a System Provider.** At least ten days before commencing any action to recover compensation or seek any other relief, equitable or otherwise, against another Board funded provider, the Agency shall provide the Board with written notice of its intent to file a lawsuit or other claim.

4.7 Survey and Investigation. The Agency shall provide the Board with copies of any reports of surveys or investigations conducted by any government agency within seven (7) days of receipt of the report, and will provide the Board with copies of any related correspondence or any follow-up action relating to such reports. The Agency shall provide the Board with copies of any certificate concerning any accreditation by a non-governmental agency and shall advise the Board within seven (7) days of any changes in accreditation status. The Agency shall advise the Board of any information that it receives indicating that any investigation is being conducted or any action is being threatened by any governmental agency or accreditation agency relating to services provided by the Agency.

ARTICLE V – ADMINISTRATION

5.1 General. The Agency is independent and autonomous and retains the ultimate responsibility for the care and treatment of all Clients to whom services are provided under this Agreement.

5.2 Records. The Agency shall keep accurate, current and complete clinical and financial records in accordance with accepted standards. The Agency shall provide Client and Service information for non-Medicaid clients to the Board in a timely manner as defined in this Agreement and in such format as the Board shall specify, and further, the Agency affirms the Board's right to obtain Medicaid billing data in aggregate form. Payment for services shall not be made until accurate information has been provided. All Client records shall be maintained in a manner that preserves confidentiality in accordance with applicable law and Board policies. The Agency shall have a record retention policy that requires clinical records to be preserved for the period required by Ohio Mental Health and Addiction Services; and requires all other records to be preserved for the period required by federal, state or local law. Provided, however, all financial records other than payroll records shall be preserved for at least ten years. The Agency shall insure that all records of subcontractors are maintained in accordance with the requirements of this agreement.

5.3 Conflicts of Interest. The Agency shall assure that: (i) none of its Trustees is a member or employee of the Board; (ii) none of its employees is a member of the Board; (iii) none of its employees is an employee of the Board unless the Board and the Agency have agreed to such arrangement in writing; and (iv) none of its Trustees is a family member of a member of the Board. The term “family member” means a spouse, child, parent, brother, sister, grandchild, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, daughter-in-law, brother-in-law or sister-in-law. Trustees, officers, employees and subcontractors of the Agency shall take all necessary steps to avoid a conflict of interest or the appearance of a conflict of interest between the provision of services pursuant to this Agreement and any other contract, employment or private practice relationship, and shall conform to all applicable ethics and tax statutes and regulations and to all applicable published opinions of the Ohio Ethics Commission.

5.4 Licenses, Permits and Inspections. The Agency shall obtain and maintain at all times any license, certification, permit, or other governmental approval or authorization that is necessary to operate its facilities or utilize its personnel and to provide the Services required under this Agreement, and will ensure that its employees and subcontractors have met all similar requirements. The Agency shall provide the Board with copies of all documentation upon request.

5.5 Use of Board Logo. The Agency shall use the Board logo on all printed matter, public displays, audio/visual presentations, agency stationery, newsletters, pamphlets, program bulletins and other public information and educational materials. The Agency shall participate with the Board in its annual marketing plan and display the Board's logo poster in a prominent outside location at its central facility and each of its satellite locations, unless the Board expressly excludes a particular location. This requirement applies to all Agency programs funded in whole or in part by the Board.

5.6 Subcontracts. The Agency shall not enter into any arrangement for a subcontractor to provide Services required to be performed by the Agency under this Agreement unless the prospective subcontractor has agreed in writing to comply with all terms and conditions applicable to the Agency under this agreement relating to the provision of such Services. Any subcontract arrangement shall not relieve the Agency of its responsibility under this Agreement for all matters relating to the provision of Services by the subcontractor.

5.7 Board Funded Property. To the extent the Board advances money to the Agency for the purchase of real or personal property of any kind, for the Agency's use in providing mental health or alcohol and drug addiction services, the Agency agrees

that it will condition such purchases upon the Board's retention of a security interest in any and all such property as provided under Board's Property Inventories for Agency Capital policy. To protect the Board's interest, Agency will execute security agreements and/or financing statements at the time of purchase and cooperate with the Board in the perfection of its interests. The Board expressly reserves all rights that it now has in any real or personal property acquired by the Agency with Board funds under the terms of prior contracts providing the funds used for the purchases.

5.8 Notice of Fund Raising. The Agency shall notify the Board of its intent to do any major fund raising activity, including type of events being planned and date of event.

ARTICLE VI – COMPENSATION

6.1 General.

6.1.1 Payer of Last Resort. The Board shall be the payer of last resort. The Agency shall bill potential first and third party payers, both public and private, for all Services to Enrolled Clients paid on a Purchase of Service basis under Article 6.3. The Agency shall assure the Board that all clients eligible for Medicaid coverage will apply to Medicaid for coverage unless the client is medically unable to do so. Clients eligible for Medicaid coverage who elect not to apply for Medicaid coverage will not be eligible to receive any subsidized services payable under this provider agreement.

6.1.2 Third Party Liability. The Agency shall make a reasonable effort to obtain information from Enrolled Clients regarding third party payers and shall make a reasonable effort to bill and collect Third Party Liability. Third Party Liability shall include but not be limited to payments for the federal share of Medicaid, Medicare and private insurance.

6.1.3 Other Sources. The Agency shall disclose to the Board all grants, awards, allocations or purchase of service agreements (collectively referred to as "Other Sources") from or with any other party, provided to the Agency for the Purpose of providing services to Enrolled Clients. Funds from Other Sources shall be applied to the payment of Services delivered to Enrolled Clients before the costs of such Services may be billed to the Board.

6.1.4 Coordination of Benefits. If services for an eligible client are covered in part by commercial insurance or Medicare, the agency may bill the Board as follows:

- (a) **Medicare primary** – The Board may be billed for the Medicare Allowed Rate less any Medicare Payments.
- (b) **Commercial Insurance primary** – The Board may be billed for the lesser of the contracted insurance rate or the Board's allowed rate less any payments received from the insurance company.
- (c) **Commercial Insurance payment from non-contracted carrier** – When the agency receives a non-negotiated payment from a carrier (e.g. UCR) that is less than the Board's allowed rate, the Board may be billed for the difference.

The Board will continue to pay eligible CPST and Partial Hospitalization services which are not covered by commercial insurance plans or Medicare at the rates established by the Board.

6.1.5 Methods of Reimbursement.

- (a) For services which the Agency provides on a Grant basis (as listed in Attachment 3) during each fiscal year the Board will pay the Agency six (6) equal bi-monthly installments in accordance with Article 6.2.
- (b) For Units of Service delivered to clients, the Board will compensate the Agency on a Purchase of Service basis in accordance with Article 6.3.

6.1.6 Limitations. Notwithstanding any provision in this Agreement to the contrary, any duty of the Board to compensate the Agency hereunder is subject to the limitations set forth in this Article. No amount shall be paid to the Agency in excess of the amounts approved by the Board.

- (a) **Pass Through Grants.** If Board funding is based upon governmental funding for a particular service, and the funds projected to be received from governmental agencies by the Board are not forthcoming, the amount allocated to the Agency for the respective fiscal year for such service shall be reduced accordingly, and the Agency will not receive any amount in excess of the adjusted allocation. In the event of any reduction in funding pursuant to this Article, the Board shall give the Agency written

notification of such reduction as soon as possible. Notwithstanding any reduction, the Agency shall make reasonable efforts to provide services to clients under treatment until the current course of treatment is completed, the client can be transferred by an Appropriate Transfer to another agency, or ninety (90) days after receipt of the written notice, whichever is sooner.

- (b) In the event of a general reduction in funds projected to be received by the Board from governmental agencies, the Board may, by formal Board action, make a reduction in the amount allocated to the Agency, and the Agency will not receive any amount beyond the adjusted allocation. In the event any reduction in funding is proposed to be taken by the Board pursuant to this Article on any basis **other than a pro rata allocation of all program and services funding**, the Board shall give the Agency forty-five (45) days written notification of such reduction before its effective date. Whenever feasible, the Agency will be afforded the opportunity to meet with a Board committee designated by the Board chair before such Board action is taken. If such a meeting does not occur before the Board action, the Agency shall be afforded, upon written request, an opportunity to meet with a Board Committee designated by the Board Chair before the reduction becomes effective. Notwithstanding any reduction, the Agency shall make reasonable efforts to provide services under treatment until the current course of treatment is completed; the client can be transferred by an Appropriate Transfer to another agency, or forty-five (45) days after receipt of the written notice, whichever is sooner.

6.2 Installment Payments.

- 6.2.1 Grant Basis-For Mental Health, or Addiction Services.** For Services rendered during the fiscal year as described in Attachment 3 for Enrolled Clients, the Agency shall be paid an amount not to exceed **\$0** as outlined below. The Board shall pay such amount in six (6) equal bi-monthly payments in July, September, November, January, March, and May by the 15th day of each payment month.

Description of Service	Amount of Grant

6.2.2 Pass Through Grants. For the grant based duties and responsibilities rendered as described in Attachment 3, the Agency shall be paid an amount not to exceed \$0 as outlined below. The Board shall pay such amount in six (6) equal bi-monthly payments in July, September, November, January, March, and May by the 15th of each payment month. Part of this allocation may be funded with federal funding (CFDA title and number and award name). The amount of federal funding and other funding will be detailed in the Agency's separate notice of award letter sent by the Board. A revised notice of award will be sent to the Agency to reflect any revisions due to changes in federal or other funding. The Agency agrees to be in compliance with all federal requirements including Title 45 CFR 92.40 and the 2012 OMB Circular A-133 requirements.

Description of Service	\$ Amount of Grant

6.3 Purchase of Service ("POS").

6.3.1 General. For services rendered to enrolled clients, the Agency may be reimbursed an amount not to exceed **\$0 as outlined below**. Part of this allocation may be funded with federal funding (CFDA title and number and award name). The amount of federal funding and other funding will be detailed in the Agency's separate notice of award letter sent by the Board. A revised notice of award letter will be sent to the Agency to reflect any revisions due to changes in federal or other funding. The Agency agrees to be in compliance with all federal requirements including Title 45 CFR 92.40 and the 2012 OMB Circular A-133 requirements. In consideration of these allocations, the agency agrees to accept new client referrals from Central Access, T.A.S.C., and hospital discharges on a weekly basis and projects that it will serve a total number of clients who will achieve prescribed outcomes as outlined in Attachment 3.

Description of Service	\$ Amount

6.3.2 Reimbursable Amount. The agency will be reimbursed by the Board as the payer of last resort. The Reimbursable Amount owed will be determined by a) the Board approved Rate as established by Article 6.4 below, and b) the number of eligible billable Units of Service provided for Enrolled Clients.

6.3.3 Reimbursement Process.

- (a) Claim Submission.** The Board will accept claims on a daily basis before end of business day. No claim will be payable unless it has been submitted to the Board in accordance with the terms of this Agreement and all Ohio Mental Health and Addiction Services requirements within 365 days from the date of service.
- (b) Claims Adjudication.** The Board will remit claims submitted by the Agency through MACSIS to the State weekly. The State will perform the adjudication, and reports on errors, held and denied claims will be remitted back to the Board bi-weekly. The Board will forward any necessary reports to the Agency for further investigation and resubmission as appropriate.
- (c) Claims Payment.** The Board will pay the Reimbursable Amount for approved MACSIS claims. The Board will submit vouchers to the Lucas County Auditor for payment of State approved MACSIS claims at least bi-weekly.
- (d) Good Faith Accommodations.** In the event that the Board is unable to pay the agency for services rendered and billed through MACSIS because of failures in the operation of MACSIS or interruptions in payment processing by the Lucas County Auditor, both of which are events outside of the control of the Agency or the Board, the Board agrees to advance the Agency ninety percent (90%) of submitted claims filed if the Board has sufficient funds and the Agency authorizes subsequent withholding. Amounts so advanced shall be set off from payments due to the Agency after claims adjudication through MACSIS. Advances shall also be subject to adjustment for any claims paid but subsequently denied in MACSIS.

6.3.4 Reconciliation and Adjustments.

- (a) Adjustments for First Party Payer Uncollectible Receivables.** Notwithstanding the provisions of Article 6.3.3 (a) above, within one year of the date of service was rendered, the Agency may bill the Board for any uncollected first party payer incurred expenses that are outstanding greater than ninety (90) days. If the Agency has made a good faith effort to collect the first party payer incurred expenses, the Board shall reimburse the Agency for the amount of the uncollected expense, subject to the POS cap. In the event the amount reimbursed by the Board is subsequently collected by the Agency, the Agency shall remit such payment to the Board or, at the Board's election, set off the payment against payments due to the Agency. Upon request by the Board, the Agency shall assign to the Board the right to collect any first party payer obligation that has been reimbursed by the Board.
- (b) Third Party Liability Denied.** Notwithstanding the provisions of Article 6.3.3 (a) above, within one year of the date the service was rendered, the Agency may bill the Board, and the Board shall pay the Agency for any Third Party Liability ("TPL") previously deducted as an adjustment to the monthly billing amount which is subsequently denied or becomes uncollectible, provided the Agency has first used its best efforts to secure payment from the third party payer. The Agency may bill the Board for denied or uncollectible TPL after all rights of appeal have been unsuccessfully exhausted, or one hundred twenty (120) days after denial of the claim, whichever first occurs. In the event the Agency receives payment from a third party payer for any amount paid by the Board, the Agency shall notify the Board and such amount shall, at the discretion of the Board, either be remitted by the Agency within 30 days of demand or set off against payments due the Agency.
- (c) Adjustments by Board for Improper Billings.** The Board may set off or receive back from the Agency any payments made for services which are subsequently determined by the Board to (i) not have been rendered or properly documented; (ii) rendered to a person not Enrolled; or (iii) rendered by an ineligible provider. Any such improper payment shall be remitted to the Board by the Agency

within 30 days of demand, or set off against payments due the Agency.

- (d) Adjustments by the Board for Denied Claims.** The Board may set off or receive back from the Agency within 30 days of demand any claims paid by the Board for which are subsequently denied by the State. Claims paid under prior year's agreements, that are subsequently denied, may be offset against claims to be paid under this Agreement at the discretion of the Board.
- (e) Agency Adjustments.** The Agency shall submit corrected billings and any adjustments to billings including, without limitation, adjustments due to denial of TPL claims within one (1) year of the date the service is rendered.
- (f) Grant Violations.** In the event that the Board is held liable by Ohio Mental Health and Addiction Services, HUD, SAMHSA or any other agency for repayment of state or Federal awards as a result of the agency's failure to comply with the terms of the award, the Board reserves the right to withhold POS and/or grant payments as reimbursement.
- (g) Prior Notice to Agency.** Before any Board action demanding any payment under Section 6.3.4 (c), (d), (e) or (f) the Agency will be informed in writing of the proposed demand for payment and the basis for the demand. The Agency will be afforded the opportunity to challenge the demand and, upon written request, will be afforded the opportunity to meet with a Board committee designated by the Board chair. The Board Committee shall make written recommendations to the Board, and state the basis for the recommendations.
- (h) Grant Awards.** Agency must submit a Fiscal Year 2015 Statement of Revenues and Expenditures for all grant awards being funded by the Board. Agency has the discretion of increasing or decreasing individual revenue and expenditure line items by no more than 10% of the original Board approved budget assuming no changes are being made to the total net award amount or to the outcomes associated with the program. If the Agency wishes to amend any individual budget line item that causes it to change by more than

10%, the Agency must submit a written request to the Board's Executive Director before March 1, 2015.

- (i) **Grant Award Under spending.** A final actual Statement of Revenues and Expenditures is due to the Board for all individual grant programs no later than 45 days after the end of the fiscal year. Any grant award under spending is to be returned to the Board within 90 days after the end of the fiscal year.

6.4 Rates. For Fiscal Year 2015, the Board will determine the Reimbursable Amount for services provided to Enrolled Clients based upon the rates stated in Attachment 2.

6.5 Hospital Bed Days. The Agency shall make a good faith effort to control the number of inpatient bed days used. It will cooperate with the Board in its efforts to reduce the number of inpatient bed days, including admissions to Rescue's Crisis Stabilization Unit (CSU).

6.6 Withholding Payments. In addition to the rights to set off, withhold or suspend payments provided by Articles 6.3.4, 7.5.1, 7.5.5 or 7.6 and without limitation of those rights, any payment due under this Agreement may be withheld by formal action of the Board if it has reason to believe that any of the following events have occurred: (i) an event of insolvency relating to the Agency; (ii) any license or certification required by law or otherwise necessary to the operation of the Agency is suspended for any reason, (iii) there is reasonable cause to believe that conditions exist relating to the Agency that represent a substantial and imminent risk of harm; (iv) Agency has delinquent tax, interest or penalty obligations to any governmental agency (v) there is reasonable cause to believe the Agency is in violation of any Board, State, or Federal billing procedure, rule or regulation; (vi) there is reasonable cause to believe that a program, service or responsibility funded by the Board on a Grant or Capacity Basis is not being rendered by the Agency, or is being rendered in a manner substantially out of compliance with Board funding guidelines, Board Policies or other agreement pertaining to such program, service or responsibility; (vii) excessive errors in claims data; (viii) Agency fails to submit the annual independent audit within required time lines; or (ix) lack of acceptable corrective action ; provided, however, the withholding permitted under this subsection (vi) of Article 6.6 may not exceed the unpaid balance of funding allocated to the relevant program, service or responsibility under Articles 6.2.1.

Before the withholding permitted by this article 6.6 occur, the Executive Director shall give the Agency written notice of intent to request Board action to withhold,

stating the reason for doing so. The Agency shall have fourteen (14) days from the date of such notice in which to satisfy the Board that the event has not occurred or has been corrected. Before any formal Board action authorizing the withholding of funds under this Article 6.6 is taken, the Agency shall, upon request, be afforded an opportunity to meet with a Board Committee designated by the Board Chair. The Committee shall make written recommendations to the Board, and shall state the basis for the recommendation. Payments withheld under this Article VI will be remitted to the Agency only upon proof satisfactory to the Board that the event supporting the withholding did not occur; or upon correction or removal of the event(s) for which funds were withheld, and, with respect to funds withheld for Grant or Capacity funded services, only to the extent that the funded services, programs or responsibilities were provided or performed by the Agency in compliance with Board Funding Guidelines, Policies, this Agreement or other applicable agreements.

ARTICLE VII – EVALUATION AND ACCOUNTABILITY

7.1 General. The Agency shall cooperate with representatives from federal and state agencies and the Board in all audits and monitoring programs. The Agency shall provide such representatives access to all information, including but not limited to medical records, financial records, program records, and other information that such representatives deem necessary to assure compliance with applicable federal and state requirements, Board Policies, and this Agreement. The Board's representatives may conduct on-site inspections of the Agency to obtain information concerning services, programs and financial matters, by giving the Agency notice of the date and time of the inspection at least thirty (30) working days in advance. The Agency shall also permit the Board's representatives to interview the Agency's staff.

7.2 Continuous Quality Improvement. The Agency shall develop and implement a continuous quality improvement program that includes a quality assurance plan and service evaluation activities that meet applicable federal and state requirements, including but not limited to O.A.C. Chapter 5122-28-0304, and Board Policies.

7.3 Consumer Satisfaction Surveys. The Board shall conduct periodic consumer satisfaction surveys and the Agency shall cooperate with such surveys and address identified areas of concern. The Agency shall also conduct periodic consumer satisfaction surveys throughout the fiscal year and shall provide reports of the results of said surveys to the Board.

7.4 Accounting. The Agency shall maintain complete and accurate financial records on an accrual basis or a modified accrual basis consistent with generally accepted accounting principles. Records shall be in a format acceptable to the

Board. The Agency warrants the accuracy and completeness of information provided to the Board under this Agreement. The Agency shall provide the Board with quarterly unaudited financial statements and the associated Balance Sheet within thirty (30) days of the end of each quarter. If the Agency receives pass through funding via the Board, the Agency will provide the Board copies of all submissions made to OMHAS relative to that funding, including applications, budgets, interim and annual reports.

7.5 Financial Audits and Compliance Reviews.

7.5.1 Annual Audit. The Agency shall have a financial and fiscal compliance audit performed annually by an independent certified public accountant approved by the Board.

The Agency shall submit the final report of this audit to the Board within four (4) months after the end of the Agency's fiscal year, but not later than November 1. No time extensions will be granted. If the Agency fails to submit the audit report by November 1, the Board's Executive Director has the discretion to assess up to a \$1,000.00 penalty effective immediately and an additional penalty of \$500.00 per week until the annual audit is completed and submitted to the Board. In lieu of cash payment for assessed penalties, the Board's Executive Director may negotiate a mutually beneficial settlement that may be enacted upon approval of the Board's trustees. Cash payments for incurred penalties will be withheld from any amounts otherwise due to Agency.

7.5.2 Audit Report. The audit report shall include the Independent Auditor's Report, complete financial statements, and the management letter. By December 15, the agency will also provide the audited actual Uniform Cost Report, and an unaudited actual Revenue Report (052 Report).

A qualified opinion shall be accepted by the Board only if the Board determines that the qualified opinion does not adversely affect the Agency's ability to perform its functions under this Agreement. The Agency agrees that as part of the annual audit, the Board may require Agency's independent auditors to review and verify all costs relating to grant payments by the Board.

7.5.3 Audit Costs. Except as otherwise provided herein, the costs of financial and compliance audits shall be at the expense of the Agency. Such costs may be included in the Agency's computation of service costs. When other payers pay for an audit, the Board shall deem the audit costs to be a non-allowable cost.

7.5.4 Other Audits or Reviews. The Board may require additional special audits or reviews if the Board determines that there is reasonable cause to believe that the Agency is demonstrating noncompliance with Board Policies or is not implementing corrective action required by an audit. The Board will pay the cost of any special audit or review that it requires under this Article. In addition, the Board, in its discretion, may require additional audits or reviews to be performed to address specific financial or billing issues.

7.5.5 Corrective Actions. The Agency shall be responsible for providing a response for any material weaknesses, material instances of non-compliance, findings, or questioned costs referred to in any audit referred to in Article 7.5 or in any other audit or survey of the Agency's services by governmental agency. In the event of material weakness, material instances of non-compliance, findings, or, questioned costs, the Agency shall have thirty (30) days from receipt of notice of such findings to take corrective action or to submit a plan of correction that is acceptable to the Board. If corrective action is not taken or a plan of correction acceptable to the Board is not submitted within thirty (30) days, or such shorter period as the Board may deem necessary by the exigencies of circumstances, all funding may be immediately suspended by the Board. If the Agency is deemed not able to be audited for any such purposes, all funds may be suspended at the discretion of the Board until the audit is complete.

7.6 Audits/Reviews. The Agency shall be subject to and cooperate with an annual compliance review for non-Medicaid treatment services conducted by representatives of the Board. The review may consist of tests that verify compliance with any clause in this agreement, including determining priority clients, review of client records, compliance with assurance statements, housing referrals, and billing accuracy. The Board shall provide written notice of the review up to 30 days prior to the review. Notification of the client records to be reviewed will be provided to the Agency not more than 48 hours prior to the review. The Board shall notify the Agency of review findings no later than 30 days after completion of the review. The Board may initiate the reversal of funds for ineligible claim findings identified in the review not sooner than 30 days after the Agency is notified of the review findings. Ineligible findings shall include duplicated claims, improperly documented service claims, services provided by an ineligible provider, or services that do not meet the service standards as described in the Ohio Administrative Code (OAC). The Agency shall be responsible for responding to any findings as described in the compliance review report including a Corrective Action Plan, if requested by the Board, within 30 days of the request.

ARTICLE VIII – TERM, MODIFICATION AND TERMINATION

8.1 Term. This Agreement shall be effective as of July 1, 2014 and shall continue in effect through June 30, 2015 unless modified or terminated early as provided herein. Notwithstanding the foregoing, this Agreement shall not commence unless and until all the following have occurred:

- (a) Board has accepted the Agency's services as part of the Board's Community Plan;
- (b) Board has approved the allocation of funds to the Agency and has authorized the execution of this Agreement.

8.2 Extension of Term. This Agreement may be extended only by written agreement of the parties.

8.3 Termination by Board for Cause. The Board, by formal Board action, may terminate this Agreement by giving written notice to the Agency in the event of the occurrence of any of the following: (i) a Change in Ownership or Control of the Agency; (ii) an Event of Insolvency relating to the agency; (iii) any license or certification required by law or necessary to the operation of the agency is terminated or suspended for any reason; (iv) material uncured breaches of the contract; (v) the Board determines that there is reasonable cause to believe that conditions exist relating to the Agency that represent a substantial and imminent risk of harm to clients; or (vi) the agency receives a "going concern" finding in their last two audit reports by their independent audit firm.

The Agency shall notify the Board as soon as possible but not later than three (3) working days after the occurrence of any of the events described in items (ii) or (iii). The Agency shall give the Board at least thirty (30) days advance written notice of any event described in item (i).

For the purpose of this agreement, a "**Change of Ownership or Control**" is any of the following:

- (a) a change in the identity of fifty percent (50%) or more of the trustees of the Agency in any twelve-month period unless such change results from the lapse of terms or resignations tendered in the ordinary course;

- (b) a change in the identity of the person or persons who hold fifty percent (50%) or more of the voting rights to elect the trustees of the Agency in any twelve-month period;
- (c) any merger or consolidation (consolidation being defined as the union of the operations of two or more entities into a single operation); and
- (d) transfer by sale or otherwise of substantially all the assets of the Agency. For purpose of the Agreement, an “**Event of Insolvency**” is any of the following:
 - (a) the granting of an order for relief against the Agency under Title 11 of the United States Code;
 - (b) the institution of a state-law reorganization, receivership, or other insolvency proceeding by or against the Agency;
 - (c) an assignment for the benefit of the Agency's creditors;
 - (d) failure by the Agency promptly to satisfy or discharge any execution, garnishment or attachment of such consequence as will impair its ability to carry out its obligations under this Agreement;
 - (e) the entry by the Agency into an agreement of composition with its creditors; or
 - (f) the inability of the Agency to meet its financial obligations as they become due.

Before any formal Board action terminating this Agreement, the Executive Director of the Board shall inform the Agency in writing of the Board's intent to recommend termination, and the reason for such recommendation. Upon written request, the agency shall be afforded an opportunity to meet with a Board Committee designated by the Board Chair. The Committee shall make written recommendations to the Board, and shall state the basis for the recommendations. The Board may exercise its right of termination for cause by providing written notice of termination to the Agency. The termination shall be effective on the date specified therein, except that termination pursuant to item (iv) shall be effective no sooner than 30 days after the date of notice, unless the breach is cured prior to that date.

8.4 Termination for Cause by Agency. This contract may be terminated by the Agency if the Board fails to make payment due hereunder within thirty (30) days after receipt on notice from Agency of such failure.

The Agency may exercise its right of termination for cause by providing written notice of termination to the Board, which notice shall be effective on the date specified therein, but no sooner than thirty (30) days after receipt by the Board.

8.5 Non-Renewal. Non-renewal of this Agreement beyond June 30, 2015, shall be in accordance with O.R.C. 340.033 (D) to the extent applicable.

8.6 Effect of Expiration or Termination. In the event of any expiration or termination of this Agreement:

- (a) The Board shall not make any additional payments due to the Agency until all final audits are complete. The costs of a final reconciliation may be deducted by the Board out of amounts due the Agency.
- (b) The Agency shall take all steps necessary for continuity of Client care.
- (c) The Agency shall insure that all information and records necessary to continuity of care, including but not limited to Client data, is transferred to an appropriate site selected by the Board. The Board will work with Agency's Board of Trustees to effectuate the transfer. .
- (d) The Agency shall continue to provide Services to the same extent as in the event of a reduction in funding as provided in Article 6.1.6.
- (e) The Agency shall transfer to the Board any property in which the Board has a reversionary interest pursuant to Article 5.8, or remit to the Board its prorated share of the market value of any such property.

ARTICLE IX – INSURANCE AND INDEMNIFICATION

9.1 Insurance. The Agency shall carry comprehensive general liability insurance and professional liability insurance (including molestation insurance) on itself and on each person employed by it, under contract with it or volunteering on behalf of it, to perform Services hereunder, with such coverage limits as the Board may determine from time to time. The initial coverage limits required hereunder shall be One Million

Dollars (\$1,000,000) per incident, and Three Million Dollars (\$3,000,000) annual aggregate.

All policies of insurance required hereunder shall be on an occurrence basis or, if on a "claims made" basis, shall contain an endorsement assuring the Agency of the right to purchase "tail" coverage at the termination or expiration of the policy. In such event, the Agency agrees to buy such tail coverage upon the termination or expiration of such policy. The obligations set forth in this Article shall continue in effect notwithstanding the termination or expiration of this Agreement. The Agency shall furnish the Board with a Certificate of Insurance annually within thirty (30) days prior to the renewal date of any such policy.

Any policy required under this Article IX shall name the Board and the Lucas County Commissioners as additional insureds and provide that the Board shall be entitled to notice from the insurer at least thirty (30) days in advance of any cancellation or non-renewal of such policy.

9.2 Automobile Insurance. The Agency shall carry automobile liability insurance for all vehicles used to transport clients, whether such vehicles are owned by the Agency or its agents, employees, volunteers or subcontractors, with coverage limits of an amount at least One Million Dollars (\$1,000,000) combined single limit coverage symbol 1 and for vans and buses One Million Dollars (\$1,000,000) combined single limit coverage symbol 1. The Agency shall provide the Board with a certificate of insurance evidencing such coverage, and shall provide the Board with thirty (30) days notice of cancellation or non-renewal of any such coverage.

Any policy required under this Article IX shall name the Board and the Lucas County Commissioners as additional insureds and provide that the Board shall be entitled to notice from the insurer at least thirty (30) days in advance of any cancellation or non-renewal of such policy.

9.3 Other Insurance. The Agency shall provide (i) casualty loss insurance on its facilities and the furniture or equipment in its facilities, including any furniture or equipment in which the Board has an interest, which provides for benefits in the amount of full replacement cost; (ii) a fiduciary bond or other insurance coverage against acts of employee fraud or dishonesty for all administrative and fiscal staff of the Agency who have fiduciary responsibilities; (iii) directors' and officers' insurance; and (iv) worker's compensation insurance. Such policies shall have such coverage limits as the Board may require.

Any policy required under this Article IX shall name the Board and the Lucas County Commissioners as additional insureds and provide that the Board shall be entitled to notice from the insurer at least thirty (30) days in advance of any cancellation or non-renewal of such policy.

9.4 Indemnification. The Board shall not be responsible or liable for any damage resulting from acts or omissions of the Agency, its trustees, officers, employees, agents, volunteers and contractors, under any theory of imputed negligence or otherwise, and the Agency shall indemnify the Board. Its members, officers, agents and employees for, defend them against and hold them harmless from any and all claims relating to any acts or omissions of the Agency, its trustees, officers, employees, agents and contractors, and from any costs, attorney fees, expenses and liabilities incurred by them in connection with such claims or in the defense of any action or proceeding brought thereon.

The indemnification rights under this Agreement shall be in addition to any rights or remedies that may be available to the Board under general legal or equitable principles in the absence of an express agreement, and this Agreement shall not be construed to limit any such rights or remedies. The obligations set forth in this agreement shall continue in effect notwithstanding the termination or expiration of this Agreement.

ARTICLE X – MISCELLANEOUS

10.1 Assignment. Neither party may assign any rights or obligations under this Agreement without the express written approval of the other party.

10.2 Waiver of Breach. Any waiver of breach of any term or provision of this agreement shall not be deemed a waiver of any other breach of the same or different provision. In addition, any waiver of any provision, obligation or duty as provided in this agreement shall not constitute a waiver of a future breach.

10.3 Notices. Any notice required or permitted under this Agreement shall be in writing, and shall be sent by certified or registered mail, postage prepaid, return receipt requested, to the other party at the address set forth below or to such other address as the party may have designated by written notice to the other party, and the notice shall be effective on the date indicated on the return receipt:

If to the Board:

Mental Health and Recovery Services
Board of Lucas County
701 Adams Street, Suite 800
Toledo, Ohio 43604
Attn: Scott A. Sylak, Executive Director

If to the Agency:

Name of Agency
Address of Agency
Toledo, Ohio 436
Attn: Executive Director

10.4 Severability. In the event any term or provision of this Agreement is declared invalid or unenforceable by any court of competent jurisdiction, the remainder of the provisions of this Agreement shall remain in force and effect, except as provided herein. If removal of the provision declared invalid or unenforceable will materially alter the obligations of either party in such a manner as to cause financial hardship to either party, the affected party may terminate this Agreement by giving written notice to the other party.

10.5 Incorporation of Schedules and Attachments. All Schedules and Attachments to this Agreement are incorporated by reference into the Agreement as though written herein.

10.6 Entire Agreement. This Agreement, including the Schedules and Attachments hereto constitutes the entire agreement between the parties relating to the subject matter hereof, and supersedes any prior oral or written agreements, promises, negotiations or representations relating to the subject matter of this agreement.

10.7 Amendment. This Agreement may be amended only by the mutual written consent of duly authorized representatives of the parties.

10.8 Headings. The section and article headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this agreement.

10.9 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Ohio.

10.10 Independent Contractors. The Agency shall at all times act and perform as an independent contractor and not as a partner, employee or agent of the Board. The Board shall neither have nor exercise any control or direction over the methods by which the Agency performs Services hereunder. The Board's only relationship with the Agency is as set forth herein, i.e., through the Agency's contractual relationship with the Board embodied in this Agreement.

10.11 Remedies. Remedies contained in this Agreement shall not be considered exclusive of any other remedies available to either party, and such remedies shall be cumulative and shall be in addition to any other remedies available at law or in equity. No delay or omission to exercise any right or power shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

10.12 Agreement Not Exclusive. This Agreement is not intended to grant the Agency the exclusive right to provide the services described herein, or to guarantee any volume of Services to the Agency.

10.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original but all of which combined shall constitute but one agreement.

10.14 Material Changes. If, at any time during the term of this Agreement Agency intends to make a material change to its capacity to provide services, the level or type of services provided, staffing levels, programming, operating budget, or any other significant change, Agency shall provide 120 days prior written notice to Board, so that the Board may determine if the Agency has deviated from the assumptions upon which this Agreement is based.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives as of the day and year first written above.

MENTAL HEALTH AND RECOVERY SERVICES BOARD OF LUCAS COUNTY

BY _____ Date
Scott A. Sylak
Executive Director

AND _____ Date
Audrey Weis-Maag
Board Chair

Approved as to form:

Assistant Lucas County Prosecutor

BY _____ Date
Executive Director

AND _____ Date
Board Chair

CERTIFICATE OF FISCAL OFFICER

The undersigned being the Chief Fiscal Officer of the Mental Health and Recovery Services Board of Lucas County, hereby certifies pursuant to O.R.C. 5705.41 that the amounts required to meet the obligations of the Board under this Agreement during Fiscal Year 2015~~3~~ have been lawfully appropriated for such purpose and are in the treasury of the Board or are in the process of collection to the credit of the appropriate fund free from any previous encumbrances.

Thomas L. Bartlett
Associate Executive Director