

[Place CMHSP Logo in 1st page header]

FISCAL MANAGEMENT SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this **[_____ day of _____]** by and between **[[name of CMHSP]]**, whose administrative offices are located at **[[address of CMHSP]]** (hereinafter referred to as the "CMHSP" or "Payor"), and **[[name of Financial Management Service Provider]]**, whose principal place of business is located at **[[address of Financial Management Service Provider]]** (hereinafter referred to as the "FMS").

WITNESSETH:

Whereas, the CMHSP is a Community Mental Health Service Provider established by the Board of Commissioners of **[[name of county]]** pursuant to Act 258 of the Public Acts of 1974, as amended (the "Mental Health Code"), MCL 330.1001;

Whereas, under the authority granted by MCL 330.1116(2)(b) and MCL 330.1116(3)(e), and MCL 330.1228 of the Mental Health Code, the Michigan Department of Health and Human Services (referred to as the "MDHHS") entered into, effective **[[Effective Date]]**, a MDHHS/CMHSP Managed Mental Health Supports and Services Contract for General Funds (referred to as the "MDHHS/CMHSP Master Contract") with the CMHSP; and

Whereas, pursuant to MCL 330.1204(b)(1) of the Mental Health Code, 330.1001 *et seq.*, Arenac, Bay, Clare, Clinton, Eaton, Gladwin, Gratiot, Hillsdale, Huron, Ingham, Ionia, Isabella, Jackson, Mecosta, Midland, Montcalm, Newaygo, Osceola, Saginaw, Shiawassee, and Tuscola counties thereafter entered into a Regional Entity arrangement under Section 204(b) *et seq.* of the Mental Health Code, for the purpose of the preparation, submission, and implementation of an Application to the MDHHS for a Medicaid Prepaid Inpatient Health Plan ("PIHP"); and

Whereas, pursuant to the Bylaws dated June 13, 2013, established under MCL 330.1204(b) *et seq.* of the Mental Health Code, the said Regional Entity is known as Mid-State Health Network ("MSHN") and is designated by the CMHSPs as constituted under the Mental Health Code, to be the Medicaid PIHP; and

Whereas, the MDHHS approved the 2013 Application for proposal and MSHN as the PIHP to contractually manage the Specialty Services Waiver Program(s) and the Supports Waiver Program(s) approved by the federal government and implemented concurrently by the state of Michigan in the designated Medicaid services area of the Arenac, Bay, Clare, Clinton, Eaton, Gladwin, Gratiot, Hillsdale, Huron, Ingham, Ionia, Isabella, Jackson, Mecosta, Midland, Montcalm, Newaygo, Osceola, Saginaw, Shiawassee, and Tuscola Counties (the "Service Area") and the MDHHS entered into, effective January 1, 2014, a MDHHS/PIHP Managed Specialty Supports and Services Contract (referred to as the "MDHHS/PIHP Master Contract") with MSHN for the provision of Medicaid mental health and substance abuse services and supports (collectively, the "Services"); and

Whereas, MSHN entered into, effective January 1, 2014, a PIHP/CMHSP Medicaid Subcontracting Agreement with each CMHSP whereby the PIHP subcontracts to the CMHSP, to provide the Services to Medicaid eligible within the CMHSP's specific county in said PIHP Service Area; and

Whereas, given all the above, the CMHSP, at its discretion, has the right to direct-operate and/or contract for Services to persons who meet the Services' eligibility criteria in the Service Area of the applicable county; and

WHEREAS, Payor, as a local government agency, may, under applicable federal revenue procedures, be designated by eligible service recipients, who elect to become common law employers of home-care service providers, to be an employer agent and, if also so designated, may engage third parties sometimes referred to as “financial management service providers” to act as either a subagent or a reporting agent of the local government agency to the Internal Revenue Service (“IRS”) and to other public authorities requiring payroll withholding and employee insurance payments if so allowed by the other public authorities; and

WHEREAS, the Payor, from time to time, is in need of certain financial management services, specifically Financial Management Services (“FMS Services”), on an independent contractor basis (“Provider” or “FMS Provider”); and

Whereas, FMS Provider has been presented to CMHSP as being in the business of providing such FMS Services and as being qualified and willing to provide fiscal agent services as required by the CMHSP under the terms and conditions set forth herein; and

Whereas, CMHSP desires to engage FMS Provider to render FMS Services to consumers for whom CMHSP refers, arranges for or authorizes such FMS Services more specifically set forth in the Statements of Work (“Consumers”), attached hereto and incorporated herein; and

Whereas, FMS Provider desires to render certain FMS Services more specifically set forth herein pursuant to the terms and conditions of this Agreement and each applicable Statement of Work.

Now, therefore, in consideration of the above and in consideration of the mutual covenants contained, it is hereby agreed by the CMHSP and FMS Provider as follows:

1. CONTRACT AUTHORITY:

This Agreement is entered into pursuant to the authority granted to the CMHSP under the Mental Health Code and the MDHHS/CMHSP Master Contract. This Agreement is in accordance with the rules, regulations, and standards (hereinafter referred to as the “Rules”) of the MDHHS, adopted and promulgated in accordance with the Mental Health Code. The Mental Health Code, the MDHHS Rules, the MDHHS/CMHSP Master Contract, and applicable state and federal laws shall govern the expenditure of funds and provisions of FMS Services hereunder and govern in any area not specifically covered by this Agreement. In the event any terms in this Agreement conflict with the MDHHS/CMHSP Master Contract, the MDHHS/CMHSP Master Contract shall control.

2. AGREEMENT CONTINGENT UPON FUNDING:

This Agreement is contingent upon the CMHSP’s receipt of sufficient federal, state, and local funds, upon the terms of such funding as appropriated, authorized and amended, upon continuation of such funding, and sufficient collections of Consumer fees and third-party reimbursements, as applicable.

3. COMPLIANCE WITH THE MDHHS/CMHSP AND MSHN/CMHSP MASTER CONTRACTS:

It is expressly understood and agreed by FMS Provider that this Agreement is subject to the terms and conditions of the Master Contracts entered between the MDHHS and the CMHSP and between MSHN and

the CMHSP. If any provision of this Agreement conflicts with the terms and conditions of the MDHHS/CMHSP or MSHN/CMHSP Master Contracts, the MDHHS/CMHSP and/or MSHN/CMHSP Master Contracts shall prevail and control. However, a conflict shall not be deemed to exist where this Agreement:

- a. contains additional provisions and additional terms and conditions not set forth in the MDHHS/CMHSP and/or the MSHN/CMHSP Master Contracts;
- b. restates provisions of the MDHHS/CMHSP and or the MSHN/CMHSP Master Contracts to afford the CMHSP the same or substantially the same rights and privileges as MDHHS; or,
- c. requires FMS Provider to perform duties and services in less time than required of the CMHSP in the MDHHS/CMHSP and/or the MSHN/CMHSP Master Contracts. A copy of the current MDHHS/CMHSP and/or the MSHN/CMHSP Master Contracts shall be supplied by the CMHSP to FMS Provider, upon FMS Provider's written request.

4. PROOF OF FMS PROVIDER'S BUSINESS STATUS; REQUIREMENTS OF PROVIDER SOLVENCY; AND, CERTIFICATION REGARDING DEBARMENT OR SUSPENSION:

- 4.1 Authority to Conduct Business. FMS Provider shall furnish Payor with notice of proof of FMS Provider's authority to conduct business in the state of Michigan and in what business capacity, prior to commencing FMS Services under this Agreement, and with notice of any related organization of said FMS Provider per alliance, affiliation, joint venture, parent/subsidiary or other business relationship that said FMS Provider is a party to during the term hereunder.
- 4.2 Financial Solvency. FMS Provider shall furnish Payor with notice of proof of financial solvency, prior to commencing FMS Services hereunder, and with immediate notice of any change in financial position material to FMS Provider's solvency and to its continuing in operation as a going concern, at any time during the term of this Agreement.

5. AGREEMENT TERM AND TERMINATION:

- 5.1 Term. The initial term of this Agreement shall begin on **[[START DATE OF CONTRACT]]** and shall continue for a period of **[[number of years or months]]** expiring on **[[END DATE OF CONTRACT]]**, unless earlier terminated as set forth herein. Following the expiration of the term, this Agreement will continue on a month-to-month basis unless a new agreement is executed by the parties or this Agreement is terminated as set forth herein.
- 5.2 Termination without Cause. Either party may terminate this Agreement at any time without cause by providing thirty (30) days prior written notice to the other party. The termination of this Agreement shall not be deemed to be a waiver by the non-breaching party of any other remedies it may have in law or in equity.
- 5.3 Termination with Cause. In the event FMS Provider breaches any of the terms of this Agreement (and if the CMHSP deems such a breach to be a material breach), the CMHSP may terminate this Agreement immediately and without prior notice. FMS Provider shall continue to render FMS Services consistent with the terms and conditions of this Agreement during any notice period and

shall complete all Consumer documentation prior to the effective date of termination. Upon termination, FMS Provider shall surrender all Consumer budget funds and all Consumer records (or true copies) within fourteen (14) days of termination.

5.4 Immediate Termination. Payor shall have the option to terminate this Agreement immediately upon the revocation, restriction, suspension, discontinuation or loss of any certification, accreditation, or authorization, or license required of the FMS Provider by the Payor. This Agreement shall terminate effective immediately upon receipt of notice and/or discovery by the Payor that FMS Provider is:

- a. listed by a department or agency of the state of Michigan as being suspended from service participation in the Michigan Medicaid and/or Medicare programs;
- b. listed by a department or agency of the state of Michigan in its registry for Unfair Labor Practices pursuant to MCL 423.321 *et seq.*; and/or,
- c. listed by the U.S. General Services Administration in its "Excluded Parties List" as to federal funding
- d. of any failure of FMS Provider to meet the requirements hereunder of solvency and of continuing as a going business concern or if FMS Provider generally fails to pay its debts as they become due.

5.5 Prior Obligations. Any termination of this Agreement shall not relieve either party of the obligations incurred prior to the effective date of such termination.

5.6 Post-Termination Obligations. Within thirty (30) days following the date of termination of this Agreement and nonrenewal, FMS Provider shall provide to Payor, submission of all outstanding claims and to cooperate with Payor in the orderly close-out process of the Agreement, transfer of records, transition of FMS Services including documentation and property, and other items material hereunder to the Payor, as applicable. Within forty-five (45) days following the date of termination or nonrenewal, FMS Provider shall provide the Payor all financial, performance, and other reports required under this Agreement. At the end of the quarter following termination, FMS Provider shall prepare and send all IRS W-4 and any other forms and/or information required by the state of Michigan, the Federal Government and the IRS.

6. RELATIONSHIP OF THE PARTIES AND INSURANCE:

6.1 Independent Contractor. In performing its responsibilities under this Agreement, it is expressly understood and agreed that FMS Provider's relationship to the CMHSP is that of an independent contractor. This Agreement shall not be construed to establish any principal/agent relationship between the CMHSP and FMS Provider.

6.2 Non-Parties. It is expressly understood and agreed by FMS Provider that the MDHHS and the state of Michigan are not parties to, nor responsible for any payments under this Agreement and that neither the MDHHS nor the CMHSP is party to any employer/employee relationship of the FMS Provider.

6.3 No Fringe Benefits. It is expressly understood and agreed that FMS Provider's staff, employees, servants, agents, and subcontractors providing services pursuant to this Agreement shall not in any

way be deemed to be or hold themselves out as the staff, employees, servants or agents of the CMHSP. FMS Provider's staff, employees, servants, agents, and subcontractors shall not be entitled to any fringe benefits from the CMHSP, such as, but not limited to, health and accident insurance, life insurance, longevity, economic increases, or paid vacation and sick leave.

- 6.4 Payment Responsibilities and Insurance. FMS Provider shall be responsible for paying all salaries, wages, or other compensation due its staff, employees, servants, agents and subcontractors performing FMS Services under this Agreement, and for the withholding and payment of all applicable taxes, including, but not limited to, income and social security taxes, to the proper federal, state and local governments. FMS Provider shall carry worker's compensation coverage and unemployment insurance coverage for its staff, employees and agents as required by law and shall require the same of its subcontractors and shall provide the CMHSP with proof of said coverage. FMS Provider shall be solely and entirely responsible for its acts and the acts of its staff, employees, servants, and sub-contractors.

7. RELATIONSHIPS WITH OTHER CONTRACTORS OF THE CMHSP:

The relationship of FMS Provider, pursuant to this Agreement, with other contractors of the CMHSP shall be that of independent contractor. FMS Provider, in performing its duties and responsibilities under this Agreement, shall fully cooperate with the other contractors of the CMHSP. The CMHSP's requirements of such cooperation shall not interfere with the FMS Provider's performance of FMS Services required under this Agreement.

8. ANTI-INTERFERENCE:

The CMHSP will not prohibit (or interfere with) FMS Provider acting within the lawful scope of his/her practice from discussing treatment options with a Consumer that may not reflect the CMHSP's position or that may not be covered by the CMHSP; and the CMHSP will not prohibit FMS Provider from acting within the lawful scope of his/her practice from advocating on behalf of a Consumer in any grievance or utilization review process, or Consumer authorization process to obtain necessary health care services.

9. SUBCONTRACTING:

FMS Provider shall not subcontract any FMS Services to be provided under this Agreement without the CMHSP's express written approval. In the event the CMHSP allows FMS Provider to subcontract, the CMHSP retains the right to review, approve and monitor any subcontracts or any subcontractor's compliance with this Agreement and all applicable laws and regulations. Any subcontracting approved by the CMHSP shall not terminate FMS Provider's legal responsibilities under this Agreement. All subcontracts that may be approved by the CMHSP must be in writing, and specify the FMS Services responsibilities delegated to the subcontractor, provide for revocation or delegation and/or imposition of sanctions if the subcontractor's performance is inadequate, provide for monitoring, including site review, of the subcontractor by the CMHSP or its designee, and provide for the requirement to comply with corrective action requirements of the CMHSP or its designee.

10. ASSIGNMENT:

FMS Provider shall not assign this Agreement without the express written consent of the CMHSP.

11. BUSINESS RECORDS, MAINTENANCE OF RECORDS & AUDITS:

- 11.1. Financial Review. FMS Provider shall submit, upon request of the CMHSP, financial statements and related reports and schedules that accurately reflect the financial position of FMS Provider. FMS Provider must submit, upon request of the CMHSP, its financial statements and supporting reports and schedules as presented to its governance authority. The CMHSP reserves the right to require the FMSI to secure an independent financial audit.
- 11.2. IRS Form 990. All FMS Providers that are nonprofit tax-exempt organizations and required to file IRS Form 990 shall submit a copy of the most recent informational return upon request of the CMHSP.
- 11.3. Accounting and Internal Controls. FMS Provider shall ensure its accounting procedures and internal financial controls conform to generally accepted accounting principles in order that the costs allowed by this Agreement can be readily ascertained and expenditures verified there from. The parties understand and acknowledge that their accounting and financial reporting under this Agreement must be in compliance with MDHHS accounting and reporting requirements.
- 11.4. Access to Books and Records. The CMHSP, the MDHHS and the state of Michigan or their designated representatives shall be allowed to review, copy and/or audit all financial records, licensure, accreditation and certification reports and to review and/or audit all clinical service records of FMS Provider pertaining to performance of this Agreement, to the full extent permitted by applicable federal and state law. Refusal to allow the CMHSP, the MDHHS or the state of Michigan or their designated representative(s) access to said records for the above-stated purposes shall constitute a material breach of this Agreement for which the CMHSP may exercise any of its remedies available at law or in equity, including, but not limited to, the immediate termination of this Agreement. Clinical records and financial records and supporting documentation must be retained by FMS Provider and be available for audit purposes for seven (7) years after the termination of this Agreement.

12. CONFLICT OF INTEREST:

FMS Provider affirms that no principal, representative, agent or another acting on behalf of or legally capable of acting on behalf of FMS Provider is currently an employee of the MDHHS or any of its constituent institutions, an employee of the CMHSP, a party to a contract with the CMHSP or administering or benefiting financially from a contract with the CMHSP, or serving in a policy-making position with an agency under contract with the CMHSP; nor is any such person related to FMS Provider currently using or privy to such information regarding the CMHSP which may constitute a conflict of interest. Breach of this covenant may be regarded as a material breach of the Agreement and a cause for termination thereof.

13. NON-DISCRIMINATION:

FMS Provider shall not refuse to provide FMS Services nor will they discriminate in providing FMS Services to any Consumer or referral, under this Agreement, based on the Consumer's source of payment for FMS Services, or on the basis of age, height, weight, marital status, arrest record, race, creed, handicap, color,

national origin or ancestry, religion, gender, sexual preference, political affiliation or beliefs, or involuntary Consumer status. FMS Provider shall not discriminate against or grant preferential treatment: to any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, programs and service provided, or any matter directly or indirectly related to employment, in contract solicitations, or in the treatment of any consumer, recipient, patient or referral, under this Agreement, on the basis of race, sex, color, religion, ethnicity, or national origin, age, disability or sex including discrimination based on pregnancy, gender identity and sex stereotyping or otherwise as required by the Michigan Constitution, Article I, Section 26, MCL 37.2101 *et seq.* (“the Elliott Larsen Civil Rights Act”), MCL 37.1101 *et seq.* (“the persons with disabilities civil rights act”), the Americans with Disabilities Act (“ADA”), Section 504 of the Federal Rehabilitation Act of 1973, and Affordable Care Act (“ACA”) Section 1557. Any breach of this section shall be regarded as a material breach of this Agreement. FMS Provider shall assure equal access for people with diverse cultural background and/or limited English proficiency, as outlined by the Office of Civil Rights Policy Guidance in the Title VI Prohibition Against Discrimination as it Affects Persons with Limited English Proficiency. FMS Provider agrees to assure accommodation of physical and communication limitations for Consumers served under this Agreement.

14. DISCLOSURE OF OWNERSHIP AND CONTROL:

FMS Provider will comply with federal regulations and disclose to the CMHSP’s CEO information about Consumers with ownership or control interests in FMS Provider, if any. The federal regulations also require the FMS Provider to identify and report any additional ownership or control interests for those Consumers in other entities, significant and material to FMS Provider’s obligations under this Agreement with the CMHSP, as well as identifying when any of the Consumers with ownership or control interests have spousal, parent-child, or sibling relationships with each other. FMS Provider must disclose changes in ownership and control information at the time of enrollment, re-enrollment, or whenever a change in entity ownership or control takes place.

15. INDEMNIFICATION & LIABILITY:

Each party to this Agreement must seek its own legal representative and bear its own costs including judgments in any litigation which may arise out of its activities to be carried out pursuant to its obligations hereunder. It is specifically understood and agreed that neither party will indemnify the other party in such litigation. In the event that liability to third parties, loss or damage arises as a result of activities conducted jointly by FMS Provider and the CMHSP in fulfillment of their responsibilities under this Agreement, such liability, loss, or damage shall be borne by FMS Provider and the CMHSP in relation to each party’s responsibilities under the joint activities, provided that nothing herein shall be construed as a waiver of any public or governmental immunity granted to the CMHSP and/or any representative of the CMHSP as provided by applicable statutes and/or court decisions.

16. INSURANCE:

16.1 Required Coverage. FMS Provider, or any of its subcontractors, shall not commence work under this Agreement until they have obtained the insurance required under this section, and shall keep such insurance in force during the entire life of the Agreement. All coverage shall be with insurance companies licensed and admitted to do business in the state of Michigan with “A-” rating by Best’s

Insurance Rating Service. The requirements below shall not be interpreted to limit the liability of FMS Provider. All deductibles and self-insured retention ("SIR's") are the responsibility of FMS Provider. FMS Provider shall maintain certificates of insurance from all CMHSP-approved subcontractors and ensure adequate coverage is provided throughout the term of the subcontractor's agreement. All coverage for subcontractors shall be subject to the minimum requirements identified below. All required insurance must protect Payor from claims that arise out of, are alleged to arise out of, or otherwise result from FMS Provider's or subcontractor's performance.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Personal & Advertising Injury \$2,000,000 General Aggregate \$2,000,000 Products/Completed Operations	FMS Provider must have its policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20-10-11-85, or both CG 20-10-12-19 and CG 20-37-12-19.
Automobile Liability Insurance	
If a motor vehicle is used in relation to FMS Provider's performance, FMS Provider must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.	
Workers' Compensation Insurance	
<u>Minimum Limits:</u> Coverage according to applicable laws governing work activities	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimum Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	
Privacy and Security Liability (Cyber Liability) Insurance	
<u>Minimum Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	FMS Provider must have its policy cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.
Professional Liability (Errors and Omissions) Insurance	
<u>Minimum Limits:</u> \$1 3,000,000 Each Occurrence \$3,000,000 Annual Aggregate	

Commented [A1]: MDHHS removed this from Master Agreement

Commented [A2]: 4.24.24 PNMC: MSHN to determine need and recommended amount

Commented [A3]: 4.24.24 PNMC: Recommended to change as indicated

--	--

- 16.2 Cancellation Notice: All insurances policies as described above shall include an endorsement stating the following: "It is understood and agreed that Thirty (30) days (ten (10) days for non-payment of premium), advanced written Notice of Cancellation, Non-Renewal, Reduction and/or Material Change shall be sent to CMHSP."
- 16.3 Proof of Insurance: FMS Provider shall provide the CMHSP, at the time that the Agreement is returned for execution, a Certificate of Insurance as well as the required endorsements. In lieu of required endorsements, if applicable, a copy of the policy sections where coverage is provided for additional insured and cancellation notice may be acceptable. Copies or certified copies of all policies mentioned above shall be furnished to the CMHSP, if so requested.
- 16.4 Continuation of Coverage: If any of the above coverage expires during the term of this Agreement, FMS Provider shall deliver renewal certificates and/or endorsements to the CMHSP at least ten (10) days prior to the expiration date.
- 16.5 Claims-Made Coverage and Certificates. The duty to maintain the insurance coverage specified in this section shall survive the expiration or termination of this Agreement and shall be enforceable, regardless of the reason for termination of this Agreement, against FMS Provider. If any required policies provide claims-made coverage, FMS Provider must: (i) provide coverage with a retroactive date before the effective date of this Agreement or the beginning of Agreement activities; (ii) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Agreement activities; and (iii) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of this Agreement, FMS Provider must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

FMS Provider must also: (i) provide insurance certificates to the Payor, containing the agreement or delivery order number, at the time of Agreement execution and within twenty (20) calendar days of the expiration date of the applicable policies; (ii) require that subcontractors maintain the required insurances contained in this section; (iii) notify the Payor within five (5) business days if any policy is cancelled; and (iv) waive all rights against the Payor for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This section is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Agreement (including any provisions

hereof requiring Provider to indemnify, defend and hold harmless the Payor).

- 16.6 Fidelity/Surety Bond. FMS Provider shall obtain and maintain appropriate coverage of fidelity/surety bonding as specifically defined and required by the Payor within the "Local Practices" attachment of this agreement.

17. COMPLIANCE WITH THE LAW; APPLICABLE LAW AND VENUE:

- 17.1 Interpretation and Compliance. This Agreement shall be construed according to the laws of the state of Michigan as to its interpretation, construction and performance. FMS Provider, its officers, employees, servants, and agents shall perform all their respective duties and obligations under this Agreement in compliance with all applicable federal, state, and local laws, ordinances, rules and regulations.
- 17.2 Venue. The CMHSP and FMS Provider agree that the venue for the bringing of any legal or equitable action under this Agreement shall be established in accordance with the statutes of the state of Michigan and/or Michigan Court Rules. In the event that any action is brought under this Agreement in federal court, the venue for such action shall be the Federal Judicial District of Michigan, Eastern District.
- 17.3 The parties hereto acknowledge and agree that the following statutes, rules, regulations and procedures govern the provision of FMS Services rendered hereunder and the relationship between the parties:
- a. The Agreement;
 - b. Michigan Mental Health Code and its rules and regulations, as amended;
 - c. Michigan Public Health Code and its rules and regulations, as amended;
 - d. MDHHS Medicaid Provider Manual, as amended;
 - e. Policies and procedures of the CMHSP with respect to Provider Networks, as more fully described in Attachment F: Local Practices of this Agreement, and the provision and payment of FMS Services contemplated by this Agreement.

18. ANTI-LOBBYING ACT:

The CMHSP will comply with the 18 USC Section 1913 ("the Anti-Lobbying Act"), and 2 USC Section 1601 *et seq.*, ("the Lobbying Disclosure Act"). Further, the CMHSP shall require that the language of this assurance be included in the award documents of all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

19. UNFAIR LABOR PRACTICES:

Pursuant to MCL 423.321 *et seq.*, the state shall not award a contract or subcontract to an employer or any subcontractor, manufacturer or supplier of the employer, whose name appears in the current register compiled by the Michigan Department of Licensing and Regulatory Affairs. The State may void any contract if, subsequent to award of the contract, the name of the CMHSP as an employer, or the name of the subcontractor, manufacturer or supplier of the CMHSP appears in the register.

20. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT ("HIPAA"):

To the extent that HIPAA is pertinent to the services that FMS Provider provides under this Agreement, FMS Provider assures that it is in compliance with the HIPAA requirements, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 ("the HITECH Act") of Title XIII, Division A of the American Recovery and Reinvestment Act of 2009, and related regulations found at 45 CFR Parts 160 and 164, including the Standards for Privacy of Individually Identifiable Health Information ("the Privacy Rule"), the Security Standards for the Protection of Electronic PHI ("the Security Rule"), and the rules pertaining to Compliance and Investigations, Imposition of Civil Money Penalties, and Procedures for Hearings ("the Enforcement Rule"), as amended from time to time, (hereafter collectively referred to as "HIPAA Regulations"); the federal confidentiality law and underlying regulations, 42 CFR Part 2 ("Part 2"). This includes the distribution of consumer handbooks and provider directories to consumers, and/or the HIPAA Privacy Notice. Reference the MSHN Provider Manual for applicable policies and/or procedures.

21. HEALTH AND SAFETY OF CONSUMERS; RECIPIENT RIGHTS AND CONSUMER GRIEVANCE PROCEDURES:

- 21.1 Health and Safety Notification. FMS Provider, in acting as a fiscal agent on behalf of Payor hereunder, agrees to immediately notify the Payor's CEO, or designated contact, of any event or information that raises questions regarding the health and safety of any Consumer receiving services pursuant to this Agreement.
- 21.2 Recipient Rights Training. FMS Provider assures the Payor that, pursuant to this Agreement, all individuals employed by the said FMS Provider shall receive training related to recipient rights, including person-centered planning and rights protection, before or within thirty (30) days after the commencement of such employment. Such recipient rights training shall occur in concert or through technical consultation with the Payor's Recipient Rights Office.
- 21.3 Recipient Rights Investigations. FMS Provider will cooperate fully during Recipient Rights investigations. The CMSHP Recipient Rights officer shall have unimpeded access to all applicable records at any time during alleged Recipient Rights investigations. FMS Provider agrees to allow individuals who properly identify themselves as representatives of Michigan Protection and Advocacy Services (P&A) access to premises, Consumers and service records in compliance with the Mental Health Code Sections MCL 330.1748 and MCL 330.1750.
- 21.4 Recipient Rights Provisions and Policies. FMS Provider shall strictly comply with all recipient rights provisions of the Michigan Mental Health Code MCL 330.1772 *et seq.* and MCL 330.1700 *et seq.*, as well as the MDHHS Administrative Rules and the Payor's policies, and shall implement appropriate remedial action for substantiated allegations of rights violations, including disciplinary action for cases involving substantiated abuse, neglect and/or harassment and retaliation.

21.5 Consumer Grievance and Appeals Procedure. FMS Provider, in acting as a fiscal agent on behalf of the Payor, agrees to comply with consumer grievance and appeals procedures required by the Payor and the MDHHS for receiving, processing and resolving promptly all complaints, disputes, and grievances.

21.6 Material Breach. Any breach of this section shall be regarded as a material breach of this Agreement and may be a cause for termination thereof by the non-breaching party.

22. NOTICES:

FMS Provider shall notify the CMHSP within ten (10) business days of any of the following events:

- a. of any civil, criminal, or other action or finding of any licensing/regulatory body or accrediting body, the results of which suspends, revokes, or in any way limits FMS Provider's authority to render Covered Services ~~(ADD DEFINITION)~~;
- b. of any charge or finding of ethical or professional misconduct by FMS Provider;
- c. of any loss of FMS Provider's professional liability insurance or any material change in FMS Provider's liability insurance;
- d. of any material change in information provided by the CMHSP in the accompanying FMS Provider's network application;
- e. any other event which limits FMS Provider's ability to discharge its responsibilities under this Agreement professionally, promptly and with due care and skill; or
- f. FMS Provider is excluded from participation with the Medicaid Program.

Any and all notices, designations, consents, offers, acceptances or other communications herein shall be given to either party, in writing, by receipted personal delivery or deposited in certified mail addressed to the addressee shown above (unless notice of a change of address is furnished by either party to the other party hereto) and with return receipt requested, effective upon receipt.

23. NON-EXCLUSIVE AGREEMENT:

It is expressly understood and agreed by the parties hereto that this Agreement shall be non-exclusive, and that this Agreement is not intended and shall not be construed to prevent either party from concurrently and/or subsequently entering into and maintaining similar agreements with other public or private entities for similar or other services.

24. BINDING EFFECT OF THE AGREEMENT:

This Agreement shall be binding upon the CMHSP(s) and FMS Provider and their respective successors and assigns.

25. FURTHER ASSURANCES:

The parties hereto shall execute all further instruments and perform all acts which are or may become necessary from time to time to effectuate this Agreement.

26. AMENDMENT:

Modifications, amendments, or waivers of any provision of this Agreement may be made only by the written mutual consent of the parties hereto.

27. COMPLETENESS OF THE AGREEMENT:

This Agreement, the attached Exhibits, and the additional and supplementary documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the CMHSP and FMS Provider and no other prior agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind either the CMHSP or FMS Provider.

28. RESOLUTION OF CONTRACT ISSUES AND SERVICE DISPUTES:

The performance of the terms of this Agreement shall be monitored on an ongoing basis by the designated representatives of the Payor and of FMS Provider. The Payor's CEO shall appoint administrative and program liaisons to be available to communicate with FMS Provider's liaisons. Contract issues between the Payor and FMS Provider as to specific provisions of this Agreement and implementation thereof and/or Service disputes hereunder shall be addressed by the designated representatives of said respective parties. Unresolved contract issues, as to specific provisions of this Agreement and implementation thereof, and/or Service disputes hereunder shall be referred to the Payor's CEO for a final determination. The Payor's CEO shall furnish FMS Provider with written notice of any such final determination hereunder.

29. WAIVERS:

No failure or delay on the part of either the Payor or FMS Provider in exercising any right, power or privilege under this Agreement shall operate as a waiver, thereof, nor shall a single or partial exercise of any right, power or privilege preclude any other further exercise of any other right, power or privilege. In no event shall the making by the Payor of any payment to FMS Provider constitute or be construed as a waiver by the Payor of any breach of this Agreement, or any default which may then exist, on the part of FMS Provider, and the making of any such payment by the Payor while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Payor in respect to such breach or default.

30. QUALITY IMPROVEMENT; PERFORMANCE INDICATORS AND OBJECTIVES; CONSUMER ASSESSMENTS AND OUTCOMES STUDIES:

FMS Provider, in acting as a fiscal agent on behalf of the Payor pursuant to this Agreement, shall meet the Quality Assessment and Performance Improvement Program ("QAPI") requirements and standards of the

Payor. FMS Provider, in acting administratively on behalf of the Payor pursuant to this Agreement, shall meet the performance indicators and objectives set forth in the attached document labeled "Exhibit A" ("PERFORMANCE INDICATORS AND OBJECTIVES"), which is incorporated by reference into this Agreement and made a part hereof. FMS Provider agrees, in acting as a fiscal agent on behalf of the Payor pursuant to this Agreement, to cooperate fully in the Payor's implementation of: **(1.)** performance improvement projects; **(2.)** quantitative and qualitative member assessments periodically, including consumer surveys, focus groups and other consumer feedback methodologies; **(3.)** regular measurement, monitoring, and evaluation mechanisms as to services, utilization, quality, and performance; **(4.)** systems for periodic and/or random compliance review or audit; and, **(5.)** studies to regularly review outcomes for Consumers as a result of services rendered pursuant to the purposes of this Agreement. Any breach of this Section shall be regarded as a material breach of this Agreement and may be a cause for immediate termination thereof by the Payor.

31. SEVERABILITY AND INTENT:

If any provision of this Agreement is declared by any Court having jurisdiction to be invalid, such provision shall be deemed deleted and shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect. If the removal of such provision would result in the illegality and/or unenforceability of this Agreement, this Agreement shall terminate as of the date in which the provision was declared invalid. This Agreement is not intended by the CMHSP or FMS Provider to be a third-party beneficiary contract and confers no rights on anyone other than the parties hereto.

32. NOTIFICATION REGARDING FUNDING:

FMS Provider shall immediately notify the CMHSP, in writing, of any action by FMS Provider's governing board or any other funding source, which would require or result in changes to the provision of Services, funding, compliance with the terms and conditions of this Agreement or any other actions with respect to FMS Provider's obligations to perform under this Agreement.

33. INFORMATION REQUIREMENTS:

The CMHSP and FMS Provider shall comply with MDHHS information requirements and standards, including those for Advance Directives. Any marketing or informative materials intended for distribution through written or other media to eligible non-Medicaid Consumers, Medicaid eligible, or the broader community that describe the availability of Covered Services and supports and how to access those services and supports pursuant to this Agreement, must be submitted by FMS Provider or FMS Provider's subcontractors for the CMHSP's approval or disapproval prior to any distribution.

34. PUBLICATIONS:

Any drawings, records, documents, papers, reports, charts, maps, graphics or manuscripts prepared for or pertaining to the supports/services performed hereunder which are published or in any other way are provided to third parties shall acknowledge that they were prepared and/or created pursuant to this Agreement. Such acknowledgement shall include a clear statement that the CMHSP and its elected and

appointed officers, employees, and agents are not responsible for the contents of the item(s) published or provided by FMS Provider to third parties.

35. TIME OF THE ESSENCE:

Time is of the essence in the performance of every obligation herein imposed.

36. DISREGARDING TITLES:

The titles of the sections in this Agreement are inserted for the convenience of reference only and shall be disregarded when construing or interpreting any of the provisions of this Agreement.

37. CULTURAL COMPETENCE/LIMITED ENGLISH PROFICIENCY:

FMS Provider shall assure equal access for people with diverse cultural background and/or limited English proficiency. FMS Provider shall demonstrate a commitment to linguistic and cultural competence that includes the ability to apply an understanding of the relationships of language and culture to the delivery of Services.

38. CERTIFICATION OF AUTHORITY TO SIGN THE AGREEMENT: The person signing this Agreement on behalf of FMS Provider hereby certifies, by signing, to the best of his or her knowledge and belief that:

- a. FMS Provider and its principals are not presently debarred, suspended, proposed from debarment, declared ineligible, or voluntarily excluded from covered transactions by any state and/or federal department or agency.
- b. FMS Provider and its principals have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- c. FMS Provider and its principals are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any offenses; and,
- d. FMS Provider and/or its principals have not within a three (3) year period preceding the commencement of this Agreement had one (1) or more public (federal, state, or local) transactions terminated for cause or default.

SIGNATURES TO FOLLOW ON NEXT PAGE

WHEREFORE, intending to be legally bound, the parties hereto have executed this Agreement as of the date set forth below.

"CMHSP"

"FINANCIAL MANAGEMENT SERVICE PROVIDER"

By: _____

By: _____

Print: _____

Print: _____

Its: Chief Executive Officer

Its: _____

Date: _____

Date: _____

Attachments:

Statement of Work

ATTACHMENT A: MDHHS Financial Management Service Provider [Self-Determination Practice Guideline](#)

ATTACHMENT B: MDHHS Financial Management Service Provider [Self-Directed Services Technical Requirement](#)

ATTACHMENT C: Human Resources Log

ATTACHMENT D: Local Practices & Reporting Requirements

ATTACHMENT E: Disclosure of Ownership & Controlling Interest

ATTACHMENT F: Business Associate Agreement

ATTACHMENT G: Policies & Attestation

STATEMENT OF WORK

Financial Management Services and Support

[NAME OF PROVIDER]

1. FMS Services provided under this Agreement shall be in compliance with the “Self-Directed Services Technical Requirement” which is issued by the MDHHS. The current version of this document at the time of contract execution is contained in Attachment B of this Agreement. This Agreement shall be subject to the current version of the “Technical Requirement” as attached to the MDHHS/PIHP Master Agreement. The Parties agree to use the MDHHS “Self-Direction Technical Requirement Implementation Guide” as a reference for developing operating procedures and making best practice decisions. The current version of the “Guide” is attached to this Agreement as Attachment B and any future updates to the “Guide” published by MDHHS will be automatically adopted under this Agreement. FMS Provider requirements specifically identified related to FMS Providers contained in the MDHHS/PIHP and MDHHS/CMHSP Master Agreement’s, which are incorporated into and made a part of this agreement by reference, shall be adhered to.

1-a. FMS Provider shall contact the CMHSP or the MDHHS annually for a copy of the most current Guide.

Commented [A4]: This line seems out of place - should it be moved or formatted differently?

2. Role of the Fiscal Management Service:

- 2.1 The purpose of FMS Provider is to receive funds making up an individual budget and make payments as authorized by the individual to providers and other parties to whom an individual using the individual budget may be obligated. An FMS Provider may also provide a variety of supportive services that assist the individual in self-directing their care.
- 2.2 The FMS Provider’s primary role is to help the employer manage and distribute funds contained in the individual budget. FMS Services include, but are not limited to:
 - 2.2.1 Facilitation of employment of service workers by the employer, including federal, state and legal tax withholding and payment of such withholding to the appropriate taxing authority.
 - 2.2.2 Unemployment compensation fees and/or wage settlements.
 - 2.2.3 All aspects of fiscal accounting required by federal, state and local authorities, MDHHS, MSHN and the CMHSP.
 - 2.2.4 Tracking and monitoring employer directed budget expenditures and identifying potential over-and under-expenditures.
 - 2.2.5 Ensuring compliance with documentation requirements related to management of public funds and that the contract reconciliation process was completed for the previous fiscal year.
 - 2.2.6 If applicable and in coordination/consultation with the CMHSP, assist employer in selection of and contracting with a service provider agency if the employer desires to obtain FMS Services from an agency or organization rather than hire individual staff.
 - 2.2.7 In coordination with the CMHSP, FMS Provider has a standard orientation protocol for Consumers (attach a copy of orientation protocol and related materials).

- 2.2.8 In coordination with the CMHSP, FMS Provider provides Consumers with resources that guide them through the process of selecting qualified staff.
 - 2.2.9 In coordination with the CMHSP, FMS Provider provides a sample job interview format for Consumers.
 - 2.2.10 In coordination with the CMHSP, FMS Provider notifies consumers of training requirements at enrollment and when CMHSPs provide written notice of training requirement updates.
 - 2.2.11 In coordination with the CMHSP, FMS Provider assists Consumers in understanding reporting, invoice processing, and documentation responsibilities.
 - 2.2.12 FMS Providers evaluate all orientation materials and their standard orientation protocol regularly to ensure accuracy and compliance with standards.
 - 2.2.13 FMS Provider distributes, collects, and processes program Consumer enrollment and staff employment packets in a timely and accurate manner.
 - 2.2.14 FMS Provider assists Consumers with understanding legal developments that affect their roles and responsibilities as employer.
 - 2.2.15 FMS Provider assists each Consumer with the use and understanding of his/her individual budget as requested or needed.
- 2.3 At a minimum, FMS Provider is expected to provide the following FMS Services for each employer and the CMHSP:
- 2.3.1 FMS Provider will designate an employee who shall be readily accessible to the CMHSP.
 - 2.3.2 FMS Provider will disburse funds as directed by the employer and the individual budget.
 - 2.3.3 FMS Provider will not issue any payments directly to the designated employer, the beneficiary, the legal guardian of the beneficiary or the parent of the beneficiary. Services provided by legal guardians and/or parent(s) are considered to be "Natural Supports" to the beneficiary.
- 2.3.4 FMS Provider will maintain complete and current financial records.
- 2.3.5 FMS Provider processes payroll and pays other invoices in a timely and accurate manner as measured by receipt of check late or checks being reissued.
 - 2.3.6 FMS Provider shall inform employer and Payor of any budgetary concerns or expenditures that are outside of the current approved budget.
- 2.4 FMS Provider will, at a minimum, maintain the following forms:

Commented [A5]: Who is the "employer"

Commented [A6R5]: "Employer" for FMS refers to Consumer

- 2.4.1 An agreement signed by the employer and employed staff indicating hourly rate
- 2.4.2 A current copy of the annual individual budget for each participant.
- 2.4.3 Employer/participant information sheet
- 2.4.4 IRS Form SS-4 – authority to create a business entity under the Disabled Domestic Employer provisions of the State of Michigan
- 2.4.5 IRS Form 2848, Power of Attorney and Declaration of Representative
- 2.4.6 IRS Form 2678, Employer Appointment of Agent
- 2.4.7 MI Form 151, Power of Attorney Authorization
- 2.4.8 IRS Form W-4
- 2.4.9 Employee release to authorize criminal background check signed by the employee and proof of background check.
The following background checks are required initially for each new employee:
 - a. Criminal history- Internet Criminal History Access Tool (ICHAT) or from a source that reveals substantially similar information found on an ICHAT. <https://apps.michigan.gov>
 - b. Michigan Public Sex Offender Registry: <https://mbspur.com>
 - c. National Sex Offender Registry: <http://www.nsopw.gov>
 - d. MDHHS Central Registry Check is required for staff working directly with children. https://www.michigan.gov/mdhhs/0,5885,7-339-73971_7119_50648_48330-180331--,00.html
- 2.4.10 Department of Homeland Security Form I-9 for each employee.
- 2.4.11 All other state and federal payroll forms required by the laws of the state and federal government
- 2.4.12 Copies of unemployment claims are kept on file, if applicable.

3. BILLING OF AND PAYMENT FOR VALID SERVICE CLAIMS. The CMHSP shall reimburse the FMS Provider for the full cost of specified services as follows:

3.1 Claims submission and reimbursement at rates sufficient to cover all cost (regardless of the FMS Provider's submission process), according to the approved budget.

4. BILLING AND PAYMENT FOR FMS SERVICE FEES. FMS Provider shall bill its fee directly to the CMHSP. This fee shall not be included in calculation of expenditure to be paid by the beneficiary's individual budget. The CMHSP is responsible for the cost of FMS Services to each beneficiary.

4.1 FMS Provider will bill the CMHSP not less than monthly for FMS Provider Services fee.

4.2 FMS Provider will bill this fee in the format of a HCFA or electronic equivalent as outlined in **Attachment F** – Local Practices & Reporting Requirements and shall use the following billing code:

Service Title	HCPCS Code	Unit Type	Unit Rate
Financial Management Service Provider Service	T2025	Per Month	\$
Financial Management Service Provider Service – Respite only	T2025	Per Month	\$

5. REPORTING:

5.1 FMS Provider will provide a copy of the check register and payroll register to the CMHSP for each individual participant, as requested by the CMHSP or as outlined in **Attachment F** – Local Practices & Reporting Requirements.

5.2 FMS Provider will provide a monthly income and expense accounting for each individual participant to the CMHSP not later than thirty (30) days after the end of each calendar month as outlined in **Attachment F** – Local Practices & Reporting Requirements. Such accounting will list all funds received from the CMHSP for the participant and all disbursements of individual budget funds made on behalf of the participant during the calendar month.

5.3 FMS Provider will provide a staff Human Resources Log for each beneficiary per Section 2.4.17 of this Agreement, as requested by the CMHSP or as outlined in **Attachment F** – Local Practices & Reporting Requirements.

ATTACHMENT A - MDHHS [Financial Management Service Provider Self-Directed Service Technical Requirement](#)
& [Financial Management Service Provider Practice Guideline](#)

ATTACHMENT C - Human Resources Log

ATTACHMENT D - Local Practices & Reporting Requirements

Report	Due Date(s)	Method of Submission
Payroll Register/Check Register		<input type="checkbox"/> Email: <input type="checkbox"/> EHR <input type="checkbox"/> Other:
Income Expense Accounting	not later than thirty (30) days after the end of each calendar month	<input type="checkbox"/> Email: <input type="checkbox"/> EHR <input type="checkbox"/> Other:
Human Resources Log (Attachment E)		<input type="checkbox"/> Email: <input type="checkbox"/> EHR <input type="checkbox"/> Other:
FMS Service Fee Claims Submission	Monthly -	<input type="checkbox"/> Email: <input type="checkbox"/> EHR <input type="checkbox"/> Other:

ATTACHMENT E - Disclosure of Ownership & Controlling Interest

ATTACHMENT F - Business Associate Agreement

ATTACHMENT G - POLICIES & ATTESTATION

PROVIDER attests to the following policies and procedures providing for the rights of CONSUMER's.

POLICIES & PROCEDURES

Complaint and Appeal Process

Confidentiality and Disclosure

Right to be Treated with Dignity and Respect

By signature below, PROVIDER acknowledges, agrees and certifies that PROVIDER will accept and comply with the policies and procedures set forth in this attachment, as the same may be amended from time to time.

_____ Signature, PROVIDER Authorized Representative	_____ Date
_____ Print, PROVIDER Authorized Representative	*Return this form with signed contract*