

AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 20__, by and between the County of Cuyahoga, Ohio (the "**COUNTY**") and the Ohio Department of Health, with principal offices located at 246 North High Street, Columbus, OH 43215, (the "**PROVIDER**") for the provision of HIV/AIDS related prescription drugs in connection with the State AIDS Drug Assistance Program and the Cuyahoga Regional HIV Services Planning Council, ("**COUNCIL**").

WITNESSETH THAT:

WHEREAS, the **COUNTY** as the grantee and Chief Elected Official for the Part A transitional grant area consisting of Cuyahoga, Ashtabula, Geauga, Lake, Lorain, and Medina counties has established the Council as a planning body for person living with HIV/AIDS; and

WHEREAS, the **COUNCIL** is responsible for identifying the needs of individuals and families affected by HIV/AIDS; and

WHEREAS, the **COUNCIL** has determined that medication assistance is needed for persons living with HIV/AIDS within the Part A six county transitional grant area (TGA) for the 2011 fiscal year; and

WHEREAS, it has been determined that the **PROVIDER** has the necessary experience and expertise to administer the State AIDS Drug Assistance Program; and

WHEREAS, the **PROVIDER** provides HIV/AIDS medications for persons living in the six county Part A TGA as identified above; and

WHEREAS, the **COUNCIL** has determined that it wishes to support the State ADAP to ensure the most advanced medications are available to persons living in our TGA.

NOW, THEREFORE, the **COUNTY** and the **PROVIDER** hereto agree as follows:

ARTICLE I SCOPE OF SERVICES

The **PROVIDER** accepts the relationship of trust and confidence from the **COUNTY**, and by this Agreement asserts that it shall provide HIV/AIDS related prescription drugs, for the period March 1, 2011 through February 29, 2012 as identified on the ADAP formulary, to

persons eligible for the FY2011 Ryan White Part A State AIDS Drug Assistance Program.

ARTICLE 2 FINANCIAL

2.1 Direct Compensation. For the provision of all services and the delivery of all products required under this Agreement, the **COUNTY** shall reimburse the **PROVIDER** a total amount not to exceed \$220,208.00 for the cost of providing HIV/AIDS related prescriptions to eligible consumers in the Part A TGA.

2.2 Documentation and Reimbursement Process.

- a. The **PROVIDER** shall provide the **COUNTY** with a list of prescriptions medications covered on the Ohio ADAP formulary. This list shall be updated for the **COUNTY** if it changes at any time during the contract period.
- b. The **PROVIDER** shall invoice the **COUNTY** for up to \$220,208.00 for the cost of formulary medications.
- c. The invoices must include each client's Ryan White ID number, gender, race/ethnicity, county of residence, insurance status, date of prescription, medication name/type, and quantity of the prescription dispensed. The total cost of providing all HIV/AIDS-related prescriptions to eligible consumers in the Part A TGA should be included on the invoice.
- d. Invoice/Reports for the service period shall be submitted no later than March 31, 2012.

ARTICLE 3 PROVIDER RESPONSIBILITY

The **PROVIDER** accepts the relationship of trust and confidence between the **COUNTY** and the **PROVIDER**, and by this Agreement agrees that it shall provide resources and service in connection with the Council, including but not limited to the following:

- 3.1 Certification of Client Eligibility.** It is the responsibility of the **PROVIDER** to determine and document Ryan White Part A eligibility status, including residency, HIV status, income, insurance status and eligibility for Medicaid coverage before serving clients. If a client is eligible for other third party reimbursement, it is the responsibility of the **PROVIDER** to bill the appropriate third party for services or refer the client to an appropriate provider that can accept that reimbursement.
- 3.2 Program Review and Provider Audits.** The **PROVIDER** shall participate in no fewer than one (1) and no greater than four (4) site visits per funded program year. Audits will include an administrative review of fiscal and programmatic components and a service review of quality of care standards and health outcomes. Key personnel involved in service delivery and direct supervision of RW Act services and all

appropriate agency and client records should be available for site visits. **PROVIDERS** whose audit results show significant non-compliance with fiscal and/or program standards will be required to prepare a corrective action plan and are subject to a second audit to review improvement. Organizations whose performance continues below compliance standards are subject to additional sanctions including a reduction in current funding, the termination of the service contract or payback of reimbursement for services determined to be ineligible or undocumented.

3.3 Program Performance Reporting. The **PROVIDER** agrees to provide to the **COUNTY** reports relative to the effective operation of the program. The **PROVIDER** shall ensure accountability for the services identified in this contract by submitting service and fiscal reports.

- a. Semi-Annual Program Reports are required from each provider for each funded service.
- b. Annual Administrative Reports, the Ryan White HIV/AIDS Data Report (RDR) and Ryan White HIV/AIDS Program Services Report (RSR), are required by The U.S. Department of Health and Human Services, HIV/AIDS Resources Services Administration. The format will be provided to each service **PROVIDER** with instructions on completion and submission requirements.
- c. Comply with data entry requirements for reporting into required systems (i.e., CAREWare, HRSA reporting systems)
- d. Other additional information may be requested at any time by the **COUNTY**. The **COUNTY** may provide specific formats for submitting reports which the **PROVIDER** will be required to follow.

3.4. Maintenance Of Effort. The **PROVIDER** certifies that the services being reimbursed by Part A are not available from the **PROVIDER** on a non-reimbursable basis or for less than the unit cost negotiated with Part A, or reimbursable in part or in full by any other third party. The **PROVIDER** certifies that they will not use Part A funds to supplant non-federal funds for services.

3.5. Funding Exclusions And Restrictions.

- a. Pursuant to Section 2605 (a)(6) of the RW Act, funds cannot be used to pay for any item or service that can reasonably be expected to be paid under any State compensation program, insurance policy, Federal or State health benefits program, or by any entity that provides health services on a prepaid basis. The Ryan White Part A Program is the "payer of last resort." This means providers must make reasonable efforts to identify and secure other funding sources outside of Ryan White legislation funds, whenever possible. Part A funds are intended to be "the payer of last resort" for the provision of care. Providers are responsible for verifying an individual's eligibility by investigating and eliminating all other potential billing sources for each service, including public

insurance programs, or private insurance. RW Act funds may not be used to supplant partial reimbursements from other sources to make up any unreimbursed portion of the cost of such services.

- b. If the **PROVIDER** elects to use RW Act funds for services, which are eligible for both third party reimbursement and grant funding, the **PROVIDER** must have a system in place to bill and collect from the appropriate third party payer. Only if the client has been determined to not be eligible for reimbursement from Medicaid or other third party payers, may the grantee use grant funds to provide these services. The **PROVIDER** may use RW Act funds while a Medicaid eligibility determination is pending, but must back bill Medicaid during the retroactive period of enrollment. The **COUNTY** reserves the right to audit records and or require proof that grant funds are not being used to support clients enrolled in third party reimbursement programs. Under Section 2604 (e), the grantee can only contract with Medicaid certified providers if the service is covered under Medicaid.
- c. The **PROVIDER** warrants that payments received from the **COUNTY** for services under this contract shall be considered payment in full for such services and that no additional claims or payments shall be sought or received by another payor source for any part or all of such services.
- d. The **PROVIDER** shall not use RW Act funds in order to:
 - 1. Support the costs of operating clinical trials of investigational agents or treatments;
 - 2. Cover the costs of funeral, burial, cremation or other related expenses;
 - 3. Purchase clothing;
 - 4. Make payments directly to recipients of services,
 - 5. Support legal services for criminal defense;
 - 6. Provide direct maintenance expenses of privately owned vehicles or any other costs associated with a vehicle, such as lease or loan payments, vehicle insurance, or license registration fees;
 - 7. Purchase or improve land, or to purchase, construct, or make permanent improvement to any building, except for minor remodeling;
 - 8. Pay property taxes.
- e. **Program Income** - The RW Act legislation requires grantees to collect and periodic report information on program income. The program income is to be returned to the respective Ryan White HIV/AIDS Program and used to provide eligible services to eligible clients. "Program income is gross income—earned by a recipient, sub-recipient, or a contractor under a grant—directly generated by the grant-supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed (e.g., direct payment, or reimbursements received from Medicaid, Medicare and third-party insurance); and income a recipient or sub-recipient earns as the result of a benefit made possible by receipt of a grant or grant funds, e.g., income as a result of drug sales when a recipient is eligible to buy the drugs because it has received a Federal grant."

As specified on the Part A notice of grant award (NGA), program income must be added to funds committed to the project or program and used to further eligible project or program objectives.” Grantees are responsible for ensuring that sub-recipients have systems in place to account for program income, and for monitoring to ensure that sub-recipients are tracking and using program income consistent with grant requirements. All program income must be reported monthly as a part of the request for payment process.

ARTICLE 4 COUNTY RESPONSIBILITY

The **COUNTY** accepts the relationship of trust and confidence between the **PROVIDER** and the **COUNTY**, and by this Agreement agrees that it shall provide resources and service in connection with the Council, including but not limited to the following:

- 4.1 **Review.** The **COUNTY** shall review the invoices provided to it by the **PROVIDER** and shall approve or comment with specificity within fifteen (15) business days the report’s receipt unless other arrangements are reached between the **COUNTY** and **PROVIDER**.

ARTICLE 5 TERM OF AGREEMENT

- 5.1 **Period of Agreement.** The terms and conditions of this Agreement shall go into effect March 1, 2011 and shall remain in effect through February 29, 2012 for services rendered during the same period.
- 5.2 **Amendment.** The terms of this contract including total reimbursement amount to reimburse for additional services rendered, can and may be amended at any time during the term of this agreement based upon service utilization and availability of funds after appropriate allocation by the **COUNCIL** and the signature of both parties.

ARTICLE 6 GENERAL PROVISIONS

- 6.1 **Publicity.** In any publicity release or other public reference, including a media release, information pamphlets, etc., on the services provided under this agreement, it will be clearly stated that the project is administered by the **COUNTY** and funded by the U.S. Department of Health and Human Services. Copies of any such materials should be sent to the **COUNTY**.
- 6.2. **Civil Rights.**
 - a. **PROVIDER** agrees to comply with the provisions of Title VI and Title VIII of the Civil Rights Act (42 USC 2000d and 2000e), the Age Discrimination in

Employment Act (29 USC 620 et seq.), the Equal Pay Act (29 USC 206 (d)), the Rehabilitation Act (29 USC 794), Title IX of the Education Amendments Act 1972 (20 USC 1618), the Age Discrimination Act (42 USC 6101), the Americans Disabilities Act (Public Law 101 - 336), and other applicable nondiscrimination regulations (29 CFR 34.20). The **PROVIDER** assures further that no portion of its program will in any way discriminate against, deny benefits to, deny employment to, or exclude from participation any person on the ground of race, color, national origin, religion, age, sex, handicap, or political affiliation or belief. Efforts shall be made to make programs and facilities accessible to eligible qualified handicapped and disabled persons; and

- b. The **PROVIDER** covenants that this Agreement is subject to the Equal Employment Opportunity Resolution No. 1985, adopted by Cuyahoga County on July 24, 1975, and the rules and regulations issued there under, which resolution, rules, and regulations are incorporated by this reference as if fully rewritten.

- 6.3. **Subcontract Authority and Subcontracting.** The **PROVIDER** may enter into subcontract agreements with other agencies, however, all subcontract agreements must be approved by the **COUNTY**. Subcontractor records must be available for review as described in Section 18. Sub-contracts that change the services, service definitions, service delivery locations or service rates are not permitted under any circumstances.

All subcontracting agencies are subject to the same terms, conditions, and covenants contained herein. The subcontractor shall comply with those rules set forth in the RW Act. No such subcontracts shall in any case release the **PROVIDER** of his liability under this contract.

- 6.4. **Suspension or Debarment Clause.** **PROVIDER** hereby represents and certifies that it, any partner, officer, or director, has not been excluded by suspension or debarment from entering into any contract with this public entity whereby federal funds will be paid, or suspended or debarred from contracting with this public entity for any other reason. It is acknowledged that any such suspension or debarment will result in voiding this contract, and **COUNTY** will not be liable for any damages whatsoever.
- 6.5. **Insurance.** The **PROVIDER** shall maintain a standard form policy or policies of insurance covering its officers, employees and agents as their interests may appear against claims of personal injury, or death and property damage.
- 6.6. **Grievance Procedures.** The **PROVIDER** shall provide the **COUNTY** with written notification of any perceived deviation as noted in the grievance procedures. Where complaints cannot be resolved, the **PROVIDER** may initiate the grievance process which shall consist of mediation and, if necessary, binding arbitration. Notification should be sent to:

Rick Werner, Project Director
Office of Health & Human Services
310 W. Lakeside Avenue, Suite 500
Cleveland, OH 44113

- 6.7. Violation/Breach of Agreement.** This contract is subject to administrative, contractual or legal remedies for violation or breach of contract terms caused by the **PROVIDER**.
- 6.8. Termination.** Upon thirty (30) calendar days written notice to the other party, either party may terminate this agreement.
- 6.9. Amendment of Contract.** The terms of this agreement including dates, services, reimbursement rates and unit costs, total reimbursable amounts and other provisions may be amended at any time upon amendment signed by both parties.
- 6.10. Law.** This agreement is subject to and will be interpreted in accordance with all applicable Federal, State and Local laws.
- 6.11. Notice.** All notices and communications provided or hereunder shall be in writing and sent via the United States Postal Services, first class prepaid, to the following or to such other addresses as may be furnished in writing by either party to the others:

If to the COUNTY:	Laureen Atkins, Grant Manager Ryan White Part A Program Health & Human Services 4261 Fulton Parkway Cleveland, OH 44144 (216) 635-2938
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If to the OHIO DEPARTMENT OF HEALTH:	Katherine Shumate Ryan White Part B Administrator Ohio Department of Health 246 North High Street Columbus, OH 43215 (614) 466-1411
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Any such notice or communication shall be deemed effective as of the date of mailing, provided, however, that all notices or other communications shall be given verbally at the earliest practical time to the parties entitled to such notice.

6.12. Electronic Signature (s). By entering into this Contract the **PROVIDER**, its officers, employees, subcontractors, sub-grantees and agents agree to conduct this transaction by electronic means by agreeing that all documents requiring **COUNTY** signatures may be executed by electronic means, and that the electronic signatures affixed by the **COUNTY** to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. The **PROVIDER** also agrees on behalf of the aforementioned entities and persons, to be bound by the provisions of Chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with the electronic signature policy of Cuyahoga County.

IN WITNESS WHEREOF, the parties hereto execute this Agreement as of the date first written above.

County of Cuyahoga, Ohio

Edward FitzGerald, County Executive

Ohio Department of Health

By:

Ed FitzGerald
Edward FitzGerald, County Executive

By:

Theodore E Wymyslo, M.D.
Signature *mw*

Theodore E. Wymyslo, M.D.,
Printed Name

Director of Health
Title