



FACILITY PROVIDER AGREEMENT

This Facility Agreement ("the Agreement") is entered into this 1st day of _____ 2008 by and between The Trustees of the University of Pennsylvania, as owner operator of PENN Behavioral Health Corporate Services (PENN Behavioral Health) and _____ ("Facility").

BACKGROUND:

PENN Behavioral Health has been established (i) to develop and administer a network of qualified providers and facilities for the purpose of delivering comprehensive mental health and chemical dependency treatment services in a high quality and cost effective manner; and (ii) to act as Plan Administrator for Payors (hereinafter defined as Administrator) and employers to arrange for the delivery of comprehensive mental health and substance abuse treatment (currently known as "PENNCare" and "UPHS Point of Service") and ASO services by such providers and facilities to persons enrolled in the Payors' health benefits plans or the employers' Employee Assistance Programs (EAP).

Facility is duly licensed to provide the services intended hereunder for individuals who are eligible for services through the Administrator's Covered Services as defined by contracts with the University of Pennsylvania, Good Shepherd Penn Partners (GSPP), and the University of Pennsylvania Health System (UPHS) and is engaged in providing mental health and/or chemical dependency treatment services through physicians and other health care professionals duly licensed to provide such services in the Commonwealth of Pennsylvania, the State of New Jersey, the State of Delaware or other states as determined by the requirements of the Payor.

PENN Behavioral Health desires to arrange for Facility to render certain mental health and/or chemical dependency treatment services to individuals referred to Facility by PENN Behavioral Health or through a Participating Provider of PENN Behavioral Health (as hereinafter required), and Facility desires to provide such services on the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein and intending to be legally bound hereby, the parties hereto mutually agree as follows:

I. DEFINITIONS:

1.01 "**Clinician**" means an independently licensed health professional who is employed by Facility.

1.02 "**Covered Services**" means those medically necessary mental health and chemical dependency treatment services that a Covered Person is entitled to receive pursuant to his or her Health Benefits Plan or Employee Assistance Program.

1.03 "**Covered Person**" means an individual entitled to benefits under a Health Benefit Plan or Employee Assistance Program offered by a Payor that has entered into an ASO/EAP Agreement with PENN Behavioral Health.

1.04 “**Administrator**” means PENN Behavioral Health in its authorization of treatment and benefit determination role. As administrator, PBH provides administrative and claims payment services only.

1.05 “**Health Benefits Plan**” means a plan, offered by a Payor, pursuant to which the Payor assumes the obligation to provide, pay for or indemnify against the cost of health care services for individuals enrolled in the plan in accordance with the terms, conditions and limitations of such plan.

1.06 “**Participating Facility**” means a facility which has entered into a contract with PENN Behavioral Health or a Payor to provide mental health and chemical dependency treatment services to Covered Persons enrolled in the Payor’s Health Benefits Plan.

1.07 “**Participating Provider**” means an individual health care professional, an organization which employs health care professionals, or a facility or other health care facility, including Facility, which is a party to a current agreement with PENN Behavioral Health to provide Covered Services to Covered Persons.

1.08 “**Payor**” means a self-insured employer, multi-employer trust, union, or other entity that has the responsibility to pay for Covered Services to Covered Persons and that has entered into an ASO/EAP Agreement with PENN Behavioral Health as Administrator.

1.09 “**Physician**” means a Clinician who is a licensed doctor of medicine or osteopathy and who is employed by Facility.

1.10 “**ASO/EAP Agreement**” means an agreement between PENN Behavioral Health and a Payor pursuant to which PENN Behavioral Health agrees to arrange for and coordinate the provision of Covered Services to Covered Persons and the Payor agrees to pay for such Covered Services.

1.11 “**Emergency Care**” means immediate care based on case risk presented at the time of assessment according to DSM-IV diagnosis and imminent risk to self and others, need to avert suffering, functional safety of patient, imminent risk of acute medical status deterioration, significant weight loss, and acute and serious impairment of psychosocial functioning. The condition requires immediate or rapid intervention to prevent death, serious harm to member or others, or to prevent deterioration of the patient’s clinical state, such that gross impairment of functioning exists and likely to result in compromise of the patient’s safety

1.12 “**Requirements**” means any and all (i) rules, regulations and policies adopted by PENN Behavioral Health or a Payor from time to time with respect to the administration of any ASO/EAP Agreement, including, without limitation, those governing provider qualification and termination, selection for participation in ASO/EAP Agreements, the determination of Covered Services to be provided by a provider, and credentialing, administration and grievances; and (ii) case management systems and ASO/EAP programs which may be established by PENN Behavioral Health and/or a Payor from time to time, including, without limitation, utilization review, pre-certification or pre-authorization, quality assessment, quality of care, peer and performance review, and referral systems and programs.

II. FACILITY OBLIGATIONS:

2.01 **ASO Agreement Participation** Facility shall participate in ASO/EAP Agreements for which Facility meets the credentialing and other qualifications established by the Payor. Facility shall abide by all terms and conditions of each ASO/EAP Agreement in which Facility participates (as referenced in Exhibit B "Procedural Guidelines for Facilities"). PENN Behavioral Health may include new ASO Agreements under Exhibit 2.01 or modify the terms of Exhibit 2.01 with respect to an existing ASO Agreement upon thirty (30) days prior written notice to Facility, and this Agreement shall be deemed so changed or amended unless Facility notifies PENN Behavioral Health that it will not participate in such new or amended ASO Agreement within the above-described thirty (30) day notice period. Facility shall maintain an open patient panel to Covered Persons under such ASO/EAP Agreements, unless prior written permission is obtained from PENN Behavioral Health to close the Facility's patient panel. Notwithstanding the foregoing, Facility acknowledges that nothing contained in this Agreement guarantees that Facility will be qualified to participate in any ASO Agreement or that PENN Behavioral Health or its Participating Providers will refer Covered Persons to Facility under any other Agreement.

2.02 **Obligation of Clinicians** Facility shall ensure that each Clinician complies with the provisions of this Agreement. Facility shall provide PENN Behavioral Health with the name of each Clinician and shall immediately notify PENN Behavioral Health in the event that Facility hires or otherwise engages additional Clinicians or terminates its relationship with a Clinician. PENN Behavioral Health reserves the right to review and reject additional clinicians.

2.03 **Provision of Covered Services** Facility shall provide or arrange for the provision of Covered Services to all Covered Persons referred to Facility under each ASO/EAP Agreement. Facility shall provide those Covered Services which are within the scope of Facility's license and approval as a Participating Provider by each Payor. Covered Services shall be provided in an economic and efficient manner and in accordance with all applicable standards of professional ethics and practices, the terms of each ASO/EAP Agreement in which Facility participates (as referenced in Exhibit B "Procedural Guidelines for Facilities") and the Requirements applicable thereto, all applicable licensure and accreditation standards as further described in Section 2.15 and all other applicable statutes, rules and regulations.

Facility shall engage adequate personnel and maintain adequate facilities to enable Facility to provide Covered Services in accordance with this Agreement.

2.04 **Non-Discrimination** Facility shall not differentiate or discriminate in the treatment of any Covered Person by reason of the fact that he or she is covered by a particular Administrator or that his or her care is arranged for under this Agreement. Facility shall not to differentiate or discriminate in the provision of Covered Services because of a patient's race, color, national origin, ancestry, religion, sex, marital status, income status, health status, or age.

2.05 **Office Location** Facility shall notify PENN Behavioral Health of any addition or change to its facility location(s) at least sixty (60) days prior to the date such change becomes effective.

2.06 **Office Hours** Facility shall notify PENN Behavioral Health of any change in its facility hours at least three (3) weeks before such change becomes effective.

2.07 **Coverage of Practice** Facility shall ensure the availability of coverage for Covered Persons 24 hours per day, 365 days per year. If necessary in order to provide such coverage, Facility shall coordinate coverage with one or more other Participating Providers and shall provide PENN Behavioral Health with the names, addresses, and telephone numbers of the Participating Provider(s) who will provide such coverage. Upon the written request of Facility, in its sole discretion, PENN Behavioral Health may approve a coverage arrangement with a non-Participating Provider.

2.08 **Referral System** Except in the case of Emergency Care or in such other circumstances as may be described in the Requirements, Facility shall provide Covered Services to Covered Persons only when it has received an appropriate referral authorization from a Participating Provider or PENN Behavioral Health. Except in Emergency Care, Facility shall not render care or treatment beyond the limits of the initial referral authorization, without requesting and being granted an additional referral. Except for services provided in Emergency Care, PENN Behavioral Health will not pay Facility for Covered Services provided to a Covered Person without an appropriate referral.

2.09 **Referral to Non-Participating Providers** Facility shall not refer any Covered Person for Covered Services except in accordance with the referral procedures contained in the applicable Requirements (as referenced in Exhibit B "Procedural Guidelines for Facilities"). Without limitation of the foregoing, Facility shall not refer Covered Persons to Non-Participating Providers for any services, including, but not limited to, in-patient, residential and partial hospitalization programs, without first contacting PENN Behavioral Health to request approval of such a referral.

If the Facility refers a Covered Person to a non-Participating Provider or a non-Participating Facility without the authorization of PENN Behavioral Health, fails to secure prior authorization for a non-emergent facility admission or extension thereof, or makes any other referral without compliance with applicable Requirements (as referenced in Exhibit B "Procedural Guidelines for Facilities"), all medical expenses, including, but not limited to, hospital and physician charges associated with the referral, will be the financial responsibility of the Facility, and PENN Behavioral Health may offset such liability from amounts otherwise due Facility pursuant to this Agreement.

2.10 **Emergency Services** If Facility renders Covered Services to a Covered Person in need of Emergency Care without a referral authorization, Facility shall notify PENN Behavioral Health, within twenty-four (24) hours of treatment of the emergency or within twenty-four (24) hours of admission of Covered Person as an inpatient.

2.11 **Billing Procedures and Paperwork** Facility shall comply with the billing procedures set forth in Exhibit A, incorporated herein by reference, and the Requirements. Facility shall submit claims for Covered Services within sixty (60) days of the date of service. PENN Behavioral Health may deny payment for any claim not submitted within such period except for claims subject to the coordination of benefits first submitted to the Administrator primarily responsible for payment. Facility shall complete all documentation of Covered Services

provided to Covered Persons required by PENN Behavioral Health and the Payor and provide it to PENN Behavioral Health on a timely basis. Payment of compensation to Facility may be delayed or denied for inadequate documentation of Covered Services.

2.12 **Quality Assurance and Case Management** Facility shall participate in, and cooperate fully with, PENN Behavioral Health and Payors' respective activities undertaken for the purpose of monitoring and evaluating the quality, cost effectiveness and medical necessity of Covered Services provided to Covered Persons, including quality assurance, medical and case management, credentialing, peer review, and grievance programs and procedures.

2.13 **Medical and Financial Records** Facility shall prepare and maintain medical records and other pertinent clinical documentation, and billing and payment records relating to the provision of Covered Services in such manner and for such periods as required by the Requirements and by law.

2.14 **Access to Records** Subject to receipt of any consent to the release of such records required by law and in accordance with HIPAA requirements as set forth in Section 9.03 of this Agreement, Facility shall permit PENN Behavioral Health, the Covered Person's Participating Provider and Payors to inspect and duplicate, upon twenty-four (24) hours notice, any and all medical, clinical and financial records relating to the provision of Covered Services to Covered Persons.

In addition, pursuant to the provisions of subpart D of 43 CFR Part 420, until the expiration of four years after the furnishing of services called for by this Agreement, Facility shall make available to the Secretary of the United States Department of Health and Human Services, to the United States Comptroller General, and to their duly authorized representatives, this Agreement, any subcontract with respect to services under this Agreement and such other books, documents and records as are necessary to certify the nature and extent of the costs of services provided hereunder. If Facility provides such services through a subcontract worth \$10,000 or more over a twelve month period with an organization related to either of them within the meaning of subpart D of 42 CFR Part 420, the subcontract shall also contain a clause permitting access by the Secretary, the Comptroller General and their duly authorized representatives to books and records of the related organization.

2.15 **Professional Licensure/Accreditation** Facility shall at all times be duly licensed by the Commonwealth of Pennsylvania and/or whichever state it operates, to operate a facility to provide the Covered Services; fully accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); and in material compliance with all applicable law. Facility shall maintain medical staff credentialing and quality assurance programs in conformity with requirements of law and JCAHO. Facility represents and warrants that Facility and any individuals employed by or on the clinical/medical staff of Facility possess the abilities and skills necessary to provide high quality mental health services in accordance with this Agreement. Facility shall provide evidence of compliance with the foregoing conditions to PENN Behavioral Health and Payors upon request.

2.16 **Insurance** Facility shall at its own expense maintain at all times, professional liability insurance with the minimum state coverage limits in which they are licensed and practice. PENN Behavioral Health shall be named as additional insured on such policies. Facility shall provide PENN Behavioral

Health, on request, evidence of such coverage. Facility shall notify PENN Behavioral Health in writing no less than ten days prior to any cancellation or any material change in the terms of any of the foregoing policies.

2.17 **Notice of Actions** Facility shall send immediate written notice to PENN Behavioral Health of any legal, governmental or other action or event which could impair the ability of Facility to carry out its obligations under this Agreement or which pertains to:

2.17.1 A reduction, cancellation or expiration of Facility's general, professional and/or other liability insurance;

2.17.2 The sanction of Facility by the State or Federal government in connection with quality of care provided to its patients; or

2.17.3 The sanction of Facility by any licensing, certification or accrediting body whose jurisdiction encompasses Facility or any of the services offered by Facility.

2.18 **Agreement Not to Induce Referrals** The parties recognize that Facility, from time to time, may refer Covered Persons for admission to a facility or program operated by an affiliate of PENN Behavioral Health. Nothing in this Agreement is intended to induce or effect such referrals or, subject to the provisions in this Agreement governing referrals to Participating Facilities, to limit or affect the ability of Facility to refer patients to any health care facility or program.

2.19 **Professional Services** PENN Behavioral Health acknowledges that Facility's duties under this Agreement involve the practice of psychiatry, psychology, social work, or a similar profession. Nothing in this Agreement is intended to alter or interfere with the provider-patient relationship, or Facility's ability and responsibility to make professional judgments within the scope of his/her professional licensure.

III. **PENN BEHAVIORAL HEALTH OBLIGATIONS:**

3.01 **ASO/EAP Agreements** PENN Behavioral Health shall pursue ASO/EAP Agreements with Payors. PENN Behavioral Health shall evaluate and, if determined by PENN Behavioral Health to be in the best interest of PENN Behavioral Health, negotiate and enter into such contracts. PENN Behavioral Health shall monitor and enforce such ASO/EAP Agreements.

3.02 **Administration and Communication** PENN Behavioral Health shall perform or arrange for the timely and effective performance of all of PENN Behavioral Health's obligations under this Agreement, all ASO/EAP Agreements and the Requirements. PENN Behavioral Health shall arrange for effective and prompt communication of information between and among PENN Behavioral Health, Facility and any Payor as is necessary and appropriate for the effective performance of this Agreement and any ASO/EAP Agreement (as referenced in Exhibit B – "Procedural Guidelines for Facilities").

3.03 **Documentation** PENN Behavioral Health shall provide Facility with copies of (i) PENN Behavioral Health's Requirements, and (ii) provider guidelines

for each ASO/EAP Agreement to which the Participating Provider is subject which may be redacted by PENN Behavioral Health as provided by law (as referenced in Exhibit B "Procedural Guidelines for Facilities"). Further, PENN Behavioral Health shall promptly provide Facility with copies of any amendments and additions thereto.

IV. TERM:

This Agreement shall commence as of the date set forth above and shall continue, unless and until terminated pursuant to Section 5 below.

V. TERMINATION:

5.01 **Termination Without Cause.** Either party may terminate this Agreement without cause by providing the other with ninety (90) days written notice.

5.02 **Termination for Cause.** Either party may terminate this Agreement upon thirty (30) days written notice in the event of a material default by the other party described in such notice, if such default remains uncured for such period of thirty (30) days.

5.03 **Automatic Termination.** This Agreement shall terminate immediately and without notice or act of any Party, in the event that:

5.03.01 Facility's license, certification or accreditation is suspended, restricted or revoked;

5.03.02 The sanction of Facility by the State or Federal government in connection with quality of care provided to its patients; or

5.03.02 Facility suffers a reduction, cancellation or expiration of its professional or general liability insurance.

5.04 **Right to Immediate Termination.**

5.04.01 PENN Behavioral Health shall have the right immediately to terminate this Agreement by written notice to Facility in the event that:

a. A petition or action is filed for Facility's liquidation or reorganization under federal or state bankruptcy or insolvency laws, unless cured within sixty (60) days; Facility makes an assignment or other conveyance for the benefit of creditors; a receiver, trustee or custodian is appointed for all or a substantial part of Facility's assets; Facility cannot pay its debts as they became due, or Facility's liabilities exceed its assets.

b. PENN Behavioral Health determines that Facility has provided services that are not of a quality consistent with professional standards of medical care generally accepted in the medical community; or

c. PENN Behavioral Health reasonably determines that Facility's continued participation presents an immediate threat to the health or safety of Covered Persons.

5.04.02 Facility shall have the right immediately to terminate this Agreement by written notice to PENN Behavioral Health upon occurrence of any of the following:

a. A petition or action is filed for PENN Behavioral Health's liquidation or reorganization under federal or state bankruptcy or insolvency laws, unless cured within sixty (60) days; PENN Behavioral Health makes an assignment or other conveyance for the benefit of creditors; a receiver, trustee or custodian is appointed for all or a substantial part of PENN Behavioral Health's assets; or PENN Behavioral Health is declared insolvent.

b. Withdrawal, expiration or non-renewal of any license or approval required by PENN Behavioral Health to perform its obligations hereunder.

c. Any legal or regulatory action which results in the inability of PENN Behavioral Health to manage the delivery of comprehensive mental health and substance abuse treatment services for Payors.

5.05 **Termination of Participation under an ASO/EAP Agreement** Upon receipt by PENN Behavioral Health of a written request by a Payor to terminate Facility's participation under its ASO/EAP Agreement with PENN Behavioral Health by written notice to Facility, PENN Behavioral Health may terminate Facility's participation in such ASO/EAP Agreement hereunder upon at least thirty (30) days prior written notice to Facility, or such shorter period of notice as may be required by a Payor under a ASO/EAP Agreement. In such event, this Agreement shall remain in effect between PENN Behavioral Health and Facility with respect to all other ASO/EAP Agreements in which Facility participates unless terminated by PENN Behavioral Health upon at least thirty (30) days prior written notice to Facility.

5.06 **Rights and Obligations Upon Termination** Upon termination of this Agreement, the participation by Facility in all ASO/EAP Agreements through PENN Behavioral Health shall terminate; provided, however, that if expressly provided under any ASO/EAP Agreement, Facility's participation under such ASO/EAP Agreement shall continue until the later date specified therein. Without limitation of the foregoing, to the extent provided by the applicable ASO/EAP Agreement or at the option of PENN Behavioral Health, Facility shall continue to provide Covered Services to each Covered Person who is a patient at the time this Agreement is terminated until the earlier of (a) the completion of such Covered Services to the patient; (b) the termination of the Covered Person's coverage under his or her Health Benefit Plan; or (c) the transfer of the Covered Person to another Participating Facility. Facility shall be compensated for Covered Services rendered after the termination date of this Agreement according to the payment terms set forth herein. Upon termination, Facility shall cooperate with PENN Behavioral Health and Payors in making other arrangements for the continuing care of Covered Persons affected by such termination.

5.07 **Notice to Covered Persons** Upon termination of this Agreement for any reason, PENN Behavioral Health shall be entitled to inform Covered Persons of such termination and Facility shall immediately discontinue use of any materials identifying Facility as a Participating Provider.

VI. **COMPENSATION AND CLAIMS:**

6.01 **Payment for Covered Services** PENN Behavioral Health shall pay Facility for Covered Services rendered to Covered Persons according to the Payment Schedule attached hereto as Exhibit A, incorporated herein by reference. Facility acknowledges that PENN Behavioral Health is not the insurer; guarantor or underwriter of the liability of Payors for benefits provided to or for any Covered Persons under this Agreement except as expressly provided in this Section and Exhibit A.

6.02 **Changes to Payment Schedule** PENN Behavioral Health shall provide Facility with thirty (30) days written notice of changes to the Payment Schedule. Facility shall have the right to provide notice of termination of this Agreement within thirty (30) days following the receipt of notice of a change in the Payment Schedule. If such notice of termination is not given, Facility shall be deemed to have accepted such change.

6.03 **Non-Covered Services** In the event that Facility makes the professional judgment that a Covered Person requires health care services that are not a Covered Service, Facility may bill and collect for such services from a Covered Person only if Facility provides written notice to the Covered Person and PENN Behavioral Health before such services are rendered stating that (a) the service is not a Covered Service; (b) the Covered Person will be personally responsible for payment for the service; (c) an estimate of the approximate cost of the service to the Covered Person; and (d) the Covered Person may choose to obtain the service from another provider.

6.04 **Continuation of Services; Covered Persons Held Harmless** Facility agrees that in the event of the insolvency or other cessation of business of a Payor or PENN Behavioral Health, services to Covered Persons (a) will continue through the period of time for which premium has been paid or with applicable payment provisions by PENN Behavioral Health in accordance with agreements and, (b) services to Covered Persons confined in Facility's inpatient unit on the date of insolvency or other cessation of operations will continue until their discharge or with applicable payment provisions by PENN Behavioral Health in accordance with agreements. Facility further agrees that in no event, including, but not limited to, non-payment by a Payor or PENN Behavioral Health, insolvency of the Payor or PENN Behavioral Health, or breach of this Agreement or an ASO/EAP Agreement by PENN Behavioral Health or a Payor, shall Facility bill, charge, collect a coinsurance deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against a Covered Person for Covered Services.

This provision shall not prohibit collection of supplemental charges or co-payments permitted to be collected by Facility in accordance with the terms of the Covered Person's Health Benefit Plan between the Payor and the Covered Person. Except as provided in Section 6.03, if it is determined by PENN Behavioral Health and/or the Payor that the services provided by Facility were not benefit eligible, Facility may not seek payment from, nor have any recourse against, any Covered Person, PENN Behavioral Health, or the Payor for such

services. Facility agrees that this provision shall survive the termination of this Agreement and shall be construed to be for the benefit of the Covered Person and that this provision supersedes any oral or written contrary agreement now existing or hereafter entered into between the Facility and the Covered Person or persons acting on their behalf.

No modification, addition or deletion to this provision shall become effective without the specific prior written approval of the U.S. Department of Labor under The Employee Retirement Income Security Act (ERISA), the Federal Law which covers the structure of Employee Benefit Plans.

6.05 **Coordination of Benefits** Facility shall cooperate with PENN Behavioral Health in providing any information reasonably requested in connection with claims and in obtaining necessary information relating to coordination of benefits, subrogation, verification of coverage, and health status. Facility shall make reasonable efforts to determine if Covered Persons have insurance or other health care coverage other than through Payor, and will promptly report any duplicate coverage to PENN Behavioral Health.

6.06 **Co-Payments** Facility shall be permitted to collect from Covered Persons all supplemental charges and co-payments, deductibles and co-insurance amounts in accordance with the terms of a Covered Person's Health Benefit Plan. The payment rates set forth in Exhibit A shall be reduced by the applicable co-payments, deductible and co-insurance amounts regardless of whether such amounts are collected by Facility. Facility acknowledges that PENN Behavioral Health is not responsible in any way for collection of such amounts.

VII. INDEPENDENT CONTRACTOR RELATIONSHIP:

This Agreement does not constitute a hiring or employment by either party, or a joint venture between PENN Behavioral Health and Facility, but rather the parties intend that Facility shall be an independent contractor and not an employee of PENN Behavioral Health. Neither Facility nor any of its employees, including the Clinicians, shall have any claim against PENN Behavioral Health under this Agreement for salary, vacation, sick leave, workers compensation, insurance, or other employee benefits, and Facility hereby agrees to indemnify PENN Behavioral Health against any such claim by any employee of Facility. Facility alone is responsible for payment of all applicable federal, state and local employment taxes and withholding for its employees and PENN Behavioral Health shall file an IRS Form 1099 reflecting all compensation paid by PENN Behavioral Health to Facility under this Agreement.

VIII. INDEMNIFICATION:

Each Party (the Indemnifying Party) agrees to indemnify and hold harmless the other party, its officers, directors and employees (the Indemnified Party) from all fines, claims, demands, suits, actions, amounts paid in settlement and costs of any kind or nature arising out of or in connection with personal injuries or death caused by the negligence or misconduct of the Indemnifying Party, provided that a Party claiming to be an Indemnified Party shall give prompt notice to the Indemnifying Party of any claim, suit or action as to which a claim for indemnification may be asserted and shall cooperate with the Indemnifying Party in its defense. The obligations set forth in this Section 8 shall survive the termination of this Agreement.

IX. MISCELLANEOUS PROVISIONS:

9.01 **Provider Roster** PENN Behavioral Health shall create and update periodically a "Provider Roster" that shall be provided to all Payors, and that may be used in marketing and similar activities. Facility shall provide all information requested by PENN Behavioral Health for its listing in the Roster, and Facility shall be listed in the Roster so long as it is a Participating Provider.

9.02 **Confidentiality of Patient Information** Facility shall protect the confidentiality of all patient records created and maintained under this Agreement, and to prevent their unauthorized disclosure to third parties. Facility acknowledges the special protections of the confidentiality of records relating to persons receiving treatment of any kind, including psychological and psychiatric problems or alcoholism and drug abuse, and Provider agrees to protect the confidentiality of such records as required by applicable law. The written consent shall be retained in each Covered Person's medical record. The Covered Person shall be advised of the purpose of this written document and that the Covered Person's refusal to grant consent shall not jeopardize the Covered Person's right to obtain present or future treatment except where disclosure of the communications or records is necessary for the treatment.

9.03 Obligations Regarding Protected Health Information (PHI)

Each party agrees to comply with all applicable rules and regulations as they exist now and as they may be amended from time to time.

PHI Obligations of Facility

To the extent that Facility is receiving from or on behalf of PENN Behavioral Health Protected Health Information ("PHI") (as the same is defined in the privacy regulations promulgated pursuant to HIPAA (45 CFR Part 160 and 164), Facility agrees to:

- a. not use or further disclose PHI other than as permitted or required by this Agreement or as required by law as defined in 45 CFR 164.501.
- b. use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement.
- c. report to PENN Behavioral Health any use or disclosure of PHI not provided for by this Agreement of which it becomes aware.
- d. ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Facility on behalf of PENN Behavioral Health agrees to the same restrictions and conditions that apply through this Agreement to Facility with respect to such information.
- e. provide access in a manner designated by PENN Behavioral Health, within twenty (20) days of receiving a request from PENN Behavioral Health, to PHI in a designated record set, as defined under HIPAA, to PENN Behavioral Health or, as directed by PENN Behavioral Health, to an Individual, as defined under HIPAA, in order to meet the requirements under 45 CFR 164.524.

- f. make any amendment(s) to PHI in a designated record set that PENN Behavioral Health directs or agrees to pursuant to 45 CFR 164.526 at the request of PENN Behavioral Health or an Individual, within thirty (30) days of receiving such request and in a manner designated by PENN Behavioral Health.
- g. make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Facility on behalf of PENN Behavioral Health available to PENN Behavioral Health, or at the request of PENN Behavioral Health to the Secretary of the U.S. Department of Health and Human Services, in a time and manner designated by PENN Behavioral Health or the Secretary, for purposes of the Secretary determining PENN Behavioral Health ' compliance with HIPAA. Facility shall immediately notify PENN Behavioral Health upon receipt by Facility of any such request, and shall provide PENN Behavioral Health with copies of any such materials.
- h. document disclosures of PHI and information related to such disclosures as would be required for PENN Behavioral Health to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- i. provide to PENN Behavioral Health or an Individual in a manner designated by PENN Behavioral Health, within thirty (30) days of receiving a request from PENN Behavioral Health, information collected in accordance with this Agreement, to permit PENN Behavioral Health to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.52.
- j. upon termination or expiration of the Agreement, return or destroy all PHI received from PENN Behavioral Health or created or received by Facility on behalf of PENN Behavioral Health, and retain no copies of PHI in any form whatsoever, except if such return or destruction is infeasible in which case Facility agrees to extend all protections of this Agreement to Facility's use and disclosure of any retained PHI and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

To the extent that returning or destroying the PHI is infeasible, Facility shall provide Company notification of the conditions that make such return or destruction infeasible.

Permitted Uses and Disclosures by Facility Except as otherwise limited in this Agreement, Facility may use or disclose PHI to perform functions, activities, or services for, or on behalf of, PENN Behavioral Health as specified herein, provided that such use or disclosure would not violate HIPAA if done by PENN Behavioral Health. In using and disclosing PHI, Facility shall make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended use or disclosure.

PHI Obligations of PENN Behavioral Health

- a. PENN Behavioral Health shall provide Facility upon request with the notice of privacy practices that PENN Behavioral Health produces in

accordance with 45 CFR 164.520, as well as any changes to such notice.

- b. PENN Behavioral Health shall provide Facility with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if PENN Behavioral Health knows that such changes affect Facility's permitted or required uses and disclosures.
- c. PENN Behavioral Health shall notify Facility of any restriction to the use or disclosure of PHI that PENN Behavioral Health has agreed to in accordance with 45 CFR 164.522, to the extent such restriction may affect Facility's use or disclosure of PHI.
- d. PENN Behavioral Health shall not request Facility to use or disclose PHI in any manner that would not be permissible under HIPAA if done by PENN Behavioral Health.

9.04 **Confidentiality of Business Information** Unless otherwise required by law or court order, Facility shall not, without the prior written consent of PENN Behavioral Health, disclose to any person or entity any information relating to the business affairs or operations of PENN Behavioral Health or any corporate affiliate of PENN Behavioral Health including, without limitation, the terms and conditions of this Agreement.

9.05 **Notices** All notices, requests, consents or other communication under this Agreement shall be in writing, and shall be delivered (a) in person, in which case it shall be deemed given upon delivery, or (b) by registered or certified United States Mail, postage prepaid and return receipt requested, which shall be deemed given on the third business day after it has been sent, or (c) by any nationally recognized overnight delivery service, charges pre-paid, which shall be deemed given one business day after it has been sent. Notices to the parties shall be sent to their addresses as set forth below, and either party may change the address to which such notice may be sent by giving written notice to the other party of its new address in the manner provided herein:

If to PENN Behavioral Health:

PENN Behavioral Health
3535 Market Street
4th Floor
Philadelphia, PA 19104
Attention: Director of Contracts
cc. Office of General Counsel

If to Facility:

9.06 **Arbitration** The parties agree to submit any unresolved dispute or claim under this Agreement to arbitration under the Rules of the National Health

Lawyers Association Alternative Dispute Resolution Service then in effect. Any such arbitration shall be commenced in Philadelphia, Pennsylvania, and the parties hereto agree to venue and jurisdiction in Pennsylvania. This provision shall be enforceable in any court of equity in Pennsylvania. The parties agree that the arbitrator(s) shall have the power to award equitable remedies, and that any award shall be final and binding and may be entered as a judgment in any court of appropriate jurisdiction. The parties shall share equally the costs of arbitration.

9.07 **Assignment** Facility shall not assign its rights or obligations under this Agreement and any purported assignment shall be null and void. PENN Behavioral Health may assign its rights and obligations under this Agreement without the consent of Facility.

9.08 **Entire Agreement** This Agreement, together with the attached Exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes any other agreement between PENN Behavioral Health and Facility, provided, however, that the parties shall promptly perform any further act, and shall promptly execute any further documents which shall be reasonable necessary to carry out the terms of this Agreement or to effectuate its purpose. Each party agrees that this Agreement has been duly and properly executed, and represents a legal and binding agreement enforceable according to its terms.

9.09 **Amendments and Waivers** A party may waive its rights under this Agreement only in writing, and no waiver shall be deemed or construed as a further or continuing waiver of any right.

9.10 **Severability** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. The parties agree to make a good faith effort to renegotiate any provision that may be held to be invalid or unenforceable by any court or regulatory agency having appropriate jurisdiction.

9.11 **Governing Law** This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

9.12 **Counterparts** This Agreement may be executed in two or more copies, each of which when executed by the parties shall be considered a duplicate original.

9.13 **Interpretation** Paragraph headings in this Agreement are for convenience only, and are not intended to, nor shall be deemed to supplement or vary the terms of the Agreement. The use of singular or plural nouns, the masculine, the feminine, and neuter genders, and the term "party" are not intended to have the effect of exclusion or limitation.

9.14 **Non-Exclusivity** Facility may enter into other contracts or participate in any other organization which has purposes identical or similar to the purposes of PENN Behavioral Health. Facility further agrees that PENN Behavioral Health is under no obligation to make referrals to Facility and Facility is under no obligation to accept such referrals.

9.15 **Relationship Among PENN Behavioral Health, a Payor and Facility**

9.15.01 Each Payor that is a party to an ASO/EAP Agreement under which Facility participates shall be deemed to be a beneficiary and

participant of this Agreement. Facility acknowledges and agrees that nothing in this Agreement shall be construed to limit:

- (i) The authority of the Payor to ensure Facility's participation in and compliance with the Payor's quality assurance, utilization management, member grievance and other systems and procedures;
- (ii) The Department of Health's authority to monitor the effectiveness of the Payor's systems and procedures or the extent to which the Payor adequately monitors any function delegated to PENN Behavioral Health, or to require the Payor to take prompt corrective action regarding quality of care or consumer grievances and complaints;
- (iii) The Payor's authority to sanction or terminate Facility if Facility is found to be providing inadequate or poor quality care or failing to comply with the Payor's systems, standards or procedures as agreed to by the PENN Behavioral Health.

9.15.02 Facility shall cooperate with and provide the Payor, the Department of Health, and any external quality review organization approved by the Department of Health, with access to medical records of Covered Persons for the purposes of quality assessment and quality improvement or investigation of complaints or grievances of Covered Persons. Facility shall provide such information, including, but not limited to, encounter, utilization, referral and other data, that PENN Behavioral Health may require to be submitted to it for compliance with its own data reporting requirements or as required by the Department of Health.

9.15.03 Facility acknowledges and agrees that in order to be a Participating Provider to Covered Persons pursuant to the Payor Agreement, Facility must meet the minimum credentialing standards established by the Payor as approved by the Department of Health. Furthermore, Facility acknowledges and agrees that the Payor retains sole authority to accept, reject or terminate Facility if Facility fails to meet such standards on a continuing basis.

9.15.04 Facility acknowledges and agrees that any delegation by the Payor to PENN Behavioral Health under the Payor Agreement for performance of quality assurance, utilization management, credentialing, provider relations and other medical managements systems, shall be subject to the Payor's oversight and monitoring of PENN Behavioral Health' performance.

Facility further acknowledges and agrees that the Payor, upon failure of PENN Behavioral Health to properly implement and administer such systems or to take prompt corrective action after identifying problems within such systems, may terminate its contract with PENN Behavioral Health and that, as a result of such termination, Facility's participation may also be terminated.

9.15.05 Facility acknowledges and agrees that if, in the judgment of the Payor, Facility has failed to cooperate with PENN Behavioral Health or the Payor in the provision of cost-effective, quality services to Covered Persons, or has failed to cooperate with and abide by the provisions of the Payor's quality assurance, utilization management or member grievance systems, or is found to be harming Covered Persons, the Payor may terminate Facility's participation under the ASO/EAP Agreement.

9.15.06 This Agreement hereby specifically incorporates by reference the ASO/EAP Agreement.

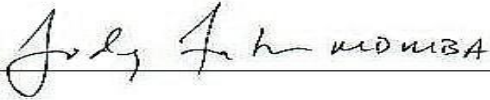
IN WITNESS WHEREOF, the parties hereto have executed this Facility Agreement the day and first above written.

**PENN Behavioral Health
Corporate Services**

Provider:

By:

By:



Jody J. Foster, MD, MBA
Executive Medical Director

Name:
Title:

Date: _____

Date: _____

EXHIBIT "A"

Payment Schedule and Billing Procedures



Payment Provisions
Effective:

The following fee schedule has been recommended for approval to PENN Behavioral Health's Network Development Committee for referrals to: _____ Main Campus and Off Campus Site Locations.

Facility Programs	Non-Hospital Detox	Non-Hospital Rehab	Intensive Outpatient	Outpatient	Facility Addresses and Contact Numbers
Services - General Program	\$ _____.00 (Inclusive)	\$ _____.00 (Inclusive)	\$ _____.00 (Inclusive)	\$ _____.00 (Inclusive)	
Initial Assessment (MD)				\$ _____.00 (Inclusive)	
Initial Assessment (Non-MD)				\$ _____.00 (Inclusive)	
Individual Sessions (MD)				\$ _____.00 (Inclusive)	
Individual Sessions (Non-MD)				\$ _____.00 (Inclusive)	
Group Sessions				\$ _____.00 (Inclusive)	
Other Services or Specialty Groups					

Please note the following:

1. PENN Behavioral Health will not provide payment for cancellations or no-shows
2. The Facility maintains responsibility to collect all amounts related to co-payments, deductibles or co-insurance. Payments as set forth above, will be reduced by the applicable amount due from the patient, whether collected or not.
3. All claims for authorized services must be submitted within sixty (60) of treatment. All claims must include patient identification data, certification numbers for each encounter, date(s) of service and CPT/ Facility code(s). PENN Behavioral Health reserves the right to reject and/or deny any claims for services which are incomplete, illegible, or submitted beyond the deadline.

Please return the signed original to: PENN Behavioral Health
3535 Market Street, 4th Floor
Philadelphia, PA 19104
Attention: Provider Relations

**For PENN Behavioral Health
Corporate Services:**

For Facility:

By: _____

By: _____

Charles J. Baker, LSW
Director, Clinical Services

Name/Title: _____

Date: _____

Date: _____

EXHIBIT "B"

Please attach a list of site locations, contact names, and outpatient providers.