THIRD AMENDED SETTLEMENT AGREEMENT

I. GENERAL PROVISIONS

A. This Third Amended Settlement Agreement (Third Amended Agreement or TASA) is entered into between the Cabinet for Health and Family Services ("Cabinet") and Kentucky Protection and Advocacy ("P&A") (hereinafter collectively referred to as "the Parties") in the interest of Kentuckians with Serious Mental Illness (SMI) currently residing in free-standing Personal Care Homes (PCHs), who receive State Supplementation pursuant to KRS 205.245 and 921 KAR 2:015, and who are not opposed to community placement; or those with SMI at risk of entry into a PCH, who would be eligible for State Supplementation, and who are not opposed to community placement.

B. The Interim Settlement Agreement (ISA), executed on August 15, 2013, Amended Settlement Agreement (ASA), executed on October 19, 2015, and Second Amended Settlement Agreement (SASA), executed on October 22, 2018, were first to begin a process and then to continue that process so that, to the extent that the Cabinet offers services to individuals with SMI residing in or at risk of entry into a PCH, such services shall be provided in the most integrated setting appropriate to meet their needs pursuant to Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131, *et seq.*, as interpreted by the United States Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a). Accordingly, through the ISA, ASA, and SASA, the Parties intended that the steps to achieve the goal of community integration and self-determination would be undertaken.

C. At the time of the ISA, ASA, and SASA, P&A, on behalf of individuals with SMI residing in or at risk of entry into a PCH who receive or could receive State Supplementation, was prepared to file a federal lawsuit, asking the Court to certify a class of approximately 2,300 individuals to ensure compliance with the ADA, *Olmstead*, and the Rehabilitation Act. Those claims remain viable, and the Cabinet acknowledges that PCHs are institutions covered by the ADA, *Olmstead*, and the Rehabilitation Act.

D. P&A and the Cabinet acknowledge that the relief agreed to in the ISA, ASA, and SASA has not been fully provided and in order to provide relief and services beyond the ISA's initial three-year period, the ASA's subsequent two-year period, and the SASA's subsequent three-year period, the Cabinet is entering into the Third Amended Settlement Agreement in good faith for an additional period of two years with one additional year of successful transition monitoring to provide access to Housing Assistance with necessary behavioral health supports to the

remaining sixty-six (66) potential class members who did not transition directly from a PCH under the SASA and an additional 80 individuals under state guardianship who did not receive SASA services, in addition to the potential class members already provided such supports under the ISA, ASA, and SASA, making for a total of 1,275 individuals. The third year shall be used only to monitor the percentage of successful transitions and whether the TASA percentage goals for successful transitions have been met. If the TASA percentage goals for successful transition are met prior to the expiration of the three-year term, the TASA shall terminate at that time and the Parties agree to transition into a Sustainability Plan for the continuation of Housing Assistance with necessary behavioral health supports.

E. The signatures below of the Secretary of the Cabinet and the Director of P&A represent and warrant that the person who has signed this Third Amended Settlement Agreement on behalf of his or her entity is duly authorized to enter into this Third Amended Agreement, effective July 1, 2023, and to bind that Party to the terms and conditions of this Third Amended Agreement.

F. This Third Amended Agreement is binding upon the Parties, by and through their officials, agents, employees, and successors for the terms of this Third Amended Agreement. If the Cabinet contracts with any outside provider for any of the services provided in this Third Amended Agreement, the Third Amended Agreement shall be binding on all contracted parties, including agents and assigns. The Cabinet shall require that all contracted parties and agents take all actions necessary for the Cabinet to comply with the provisions of this Third Amended Agreement, including TASA-specific deliverables and Performance Indicators in the contracts of any provider delivering supports or services, or responsible for any provisions of the TASA.

G. This Third Amended Agreement and any documents incorporated by reference constitute the entire integrated Third Amended Agreement of the Parties. No prior contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding. Any amendment to this Third Amended Agreement shall be in writing and signed by both Parties.

H. The Cabinet acknowledges it has pledged seven million, five hundred thousand dollars ($7,500,000) each in State Fiscal Years 2024 and 2025.

I. The Cabinet, while empowered to enter into and implement this Third Amended Agreement, does not have the legal authority to bind the Kentucky General Assembly, which has the authority under the Kentucky Constitution and laws to appropriate funds for, and amend laws pertaining to, the Cabinet's system of

services for people with mental illness including for the amount pledged and referred to in Section I.H. The Cabinet agrees to seek funding necessary to implement and complete the terms of this Third Amended Agreement in good faith. In the event the Cabinet fails to attain necessary appropriations to implement and complete the terms of this Third Amended Agreement in a future fiscal year, this Third Amended Agreement shall become null and void. Any question of whether the amount of the appropriations is adequate to implement and complete the terms of the Third Amended Agreement is solely for determination by the Cabinet, and the Cabinet's determination may not be challenged by P&A unless P&A can show it was not made in good faith.

J. During the pendency of this Third Amended Agreement, P&A agrees not to file any litigation against the Cabinet under the ADA or the Rehabilitation Act or *Olmstead* for any claim or allegation regarding the failure of the Cabinet to meet its obligations under the ADA or the Rehabilitation Act or *Olmstead* for persons with SMI residing in or at risk of entry into a PCH who receive or could receive State Supplementation.

K. The Parties represent and acknowledge that this Third Amended Agreement is the result of good faith negotiations. The Parties further represent and acknowledge that the terms of this Third Amended Agreement have been voluntarily accepted, after consultation with counsel, for the purpose of refocusing the Cabinet's use of Personal Care Homes.

L. This Third Amended Agreement shall be interpreted in accordance with federal law and the laws of the Commonwealth of Kentucky. The venue for all legal actions concerning this Agreement shall be in the Franklin Circuit Court.

II. DEFINITIONS

A. "Housing Assistance" shall mean assistance in gaining access to housing in the community, along with voluntary, flexible supports to help people with SMI that meet the requirements of Section III.D.7. of this Third Amended Agreement. This shall also mean assistance in gaining access to state or federal housing vouchers or subsidies if the person so chooses. It shall include access to the Community Integration Supplementation (CIS) pursuant to 921 KAR 2:015, and the Olmstead Housing Initiative (OHI).

B. "Individual" shall mean a person who is 18 years of age or older or a person in a situation where a guardian (either State or private) has been appointed because the individual has been determined disabled pursuant to KRS 387.500 *et seq.*, then "individual" shall mean the person and his or her guardian.

C. "Serious Mental Illness" (SMI) shall mean a mental illness or disorder (but not a primary diagnosis of Alzheimer's disease or dementia) that is described in the Diagnostic and Statistical Manual of Mental Disorders (DSM), 5th Edition, or the DSM currently in use, that impairs or impedes functioning in one or more major areas of living and is unlikely to improve without treatment, services and/or supports.

D. "Tenancy Rules" shall mean rights created by a landlord/tenant relationship, whether through a direct lease or a sublease.

E. "Providers" shall mean Community Mental Health Centers (CMHC) and their affiliate organizations, Behavioral Health Service Organizations (BHSO), and any individual or organization qualified to provide behavioral health services. For purposes of this Third Amended Agreement, any qualified provider capable of providing the services required by this Third Amended Agreement may provide such services regardless of its geographic location or the geographic location of the individual being served.

F. "Successful transition" shall mean a unique individual with SMI residing or at risk of residing in a PCH who has transitioned to live in a setting that meets the criteria of Section III.D.7. for a period of at least ninety (90) consecutive days as a short-term successful transition and three hundred, sixty (360) consecutive days as a long-term successful transition. A transition shall not be deemed successful or unsuccessful due to death or placement in a nursing facility or the Supports for Community Living (SCL) waiver program of the individual within these periods. As long as tenancy rights are maintained, a hospitalization or incarceration shall not interfere with the calculation of success.

III. SUBSTANTIVE PROVISIONS

A. FOCUSING ON APPROPRIATE SUPPORTS AND SERVICES IN THE MOST INTEGRATED SETTING

1. The Cabinet agrees to continue to develop and implement effective measures to provide adequate public services and supports identified through person-centered planning in the most integrated setting appropriate to meet the needs of individuals with SMI who are residing in or at risk of entry into a PCH, pursuant to the details and timelines set forth below.

2. All state guardians shall receive information from the Cabinet to encourage individuals with SMI who are under state guardianship and who reside in or are at risk of entry into PCHs to participate to the maximum extent of his/her abilities in all decision that will affect him/her; act in his/her behalf on all

matters in which the individual under guardianship is able to do so; and develop or regain, to the maximum extent possible, the individual's capacity to meet the essential requirement for his/her physical health or safety. Guardians shall be encouraged to permit individuals who have been determined disabled to participate as fully as possible in treatment discussions and discharge planning, to the maximum extent of the individual's capabilities. Any decisions made by the guardian about where the individual will live should reflect the individual's expressed preferences as documented, to the extent possible.

B. REGULATION

1. The Cabinet agrees to file an amendment to the regulation for PCHs or a new regulation for PCHs, whichever is determined to be more feasible by the Cabinet, within one hundred eighty (180) days of the execution of this Agreement, requiring access to confidential and secure telehealth services (unless that access is impossible to provide due to lack of broadband service or lack of an appropriate physical space) for residents of all PCHs that participate in the Mental Illness or Intellectual Disability Supplement Program pursuant to 921 KAR 2:015 Section 13 and all PCHs that have more than thirty-five percent (35%) residents with SMI as shown in the Annual Long Term Care Utilization and Service Report data. The Cabinet agrees to seek P&A's comments on this and any other draft administrative regulation(s) or potential changes to the new regulation relating to any issue that may affect the SMI population prior to the administrative regulation being submitted for final execution. The Cabinet will give due consideration to P&A's comments and supply written responses articulating the rationale if it declines to adopt those suggestions.

2. In accordance with KRS 216.555, the Cabinet agrees to publish results of annual PCH inspections including the date the inspection was completed, statement that facility is required to submit a corrective action plan if applicable, a statement of finding that deficiency has been corrected, and date the finding of deficiency was corrected.

C. CABINET-LEVEL ADMINISTRATOR

1. The Cabinet shall maintain a Cabinet-level position whose responsibility is to oversee the terms of this Third Amended Agreement and who shall have the responsibility for and authority to ensure compliance. The P&A Director can communicate directly with this official.

D. COMMUNITY-BASED SUPPORTED HOUSING ASSISTANCE

1. The Cabinet will develop and implement measures to provide individuals outlined in Section III.D.2.a-c access to community-based supported housing. Nothing in this Agreement will require the Cabinet to forgo federal funding or federal program participation for housing that meets the criteria herein to provide community placements for individuals pursuant to this Third Amended Agreement.

2. Priority for eligibility for the receipt of Housing Assistance under this Third Amended Agreement will be given to the following categories of individuals, including individuals under state guardianship:

    a. Individuals with SMI who are residing in a PCH and receive State Supplementation who have expressed to P&A, prior to the signing of this Third Amended Agreement, an interest in receiving services and supports in the most integrated setting and have been entered into the Data Tracking Tool (DTT) maintained by DBHDID, and who, at the time of contact by the Cabinet, with timely follow-up, still wish to move into alternative housing;

    b. Individuals with SMI who are residing in a PCH and receive State Supplementation;

    c. Individuals with SMI who are or will be discharged from one of the state psychiatric hospitals set out in 908 KAR 2:040, Section 1, who have previously resided in a PCH or who are at risk of being placed in a PCH upon discharge from the psychiatric hospital.

        1) No individual should be discharged from a state psychiatric hospital to a PCH unless:
            a) The CMHC has been notified of the impending discharge, if the patient consents to such notification;
            b) A Level of Care Utilization System (LOCUS) assessment has been administered and is documented as a part of the medical record; and
            c) The individual has been informed of the available community resources and consents to the placement in the PCH.
        2) Discharge planning will begin upon admission
        3) The Cabinet will track the numbers of individuals released from a state psychiatric hospital to a PCH, including those being placed there for the first time; analyze the releases and identify barriers to release into the community; and develop and implement measures to overcome the problems and barriers identified; and

d. Individuals who are otherwise diverted from entry into a PCH.

3. The Cabinet will continue to provide Housing Assistance under this Agreement and the ISA, ASA, and SASA, to include the remaining sixty-one (61) individuals with SMI who are to transition directly from a PCH and an additional 80 individuals under state guardianship who are to receive services via the TASA. As of April 24, 2023, the Parties agree that the following number of persons are receiving the following services:

Community Integration Supplement (CIS)	2,435
Olmstead Housing Initiative (OHI)	48
No CIS or OHI, but living in the community Pursuant to the terms of the ISA, ASA and SASA	233
Total	2,716*

* 184 total persons having a state guardian have been served via the ISA, ASA, and SASA, and 202 of the required 263 have transitioned directly from a PCH during SASA

4. Compliance with the numbers above shall be measured by counting the unique individuals who are class members receiving CIS, OHI, or living in the community without CIS or OHI, but with other services and supports pursuant to the terms of the ISA, ASA, SASA, and TASA as demonstrated on the Data Tracking Tool on the reporting date.

5. Housing Assistance shall be allocated on a first come, first served basis following the terms set forth in Section III.D.2. based on geographic housing availability and individual preferences in accordance with the priorities set forth above.

6. The Cabinet currently has ongoing programs for housing assistance that will continue in effect. The Cabinet may utilize those programs to fulfill its obligations under this Third Amended Agreement to provide Housing Assistance to individuals, so long as the Housing Assistance provided using those ongoing programs meets all the criteria herein and the persons served under this Third Amended Agreement meet criteria for those programs. In addition, the Cabinet agrees to commit up to $1 million of the amounts listed in Section I.H. toward its ongoing housing assistance programs over the term of this Third Amended Agreement. Those funds shall also be used to broaden the existing housing assistance programs to cover the costs of unusual or extraordinary repairs incurred by landlords as a result of their participation in the programs. Those funds shall not be used for repairs needed as a result

of normal wear and tear. No additional funds will be provided until existing fund balances are expended.

7. Housing Assistance will be provided for individuals to live in settings that meet the following criteria:

   a) They are permanent housing with Tenancy Rights;

   b) They include tenancy support services that enable residents to attain and maintain integrated, affordable housing. Tenancy support services offered to people living in supported housing are flexible and are available as needed and desired, but are not mandated as a condition of tenancy;

   c) They enable individuals with disabilities to interact with individuals without disabilities to the fullest extent possible;

   d) They do not limit individuals' ability to access community activities at times, frequencies and with persons of their choosing;

   e) They are scattered site housing, where no more than 25% of the units in any development are occupied by individuals with a disability known to the Cabinet;

   f) They afford individuals choice in their daily life activities, such as eating, bathing, sleeping, visiting, and other typical daily activities; and

   g) The priority is for single-occupancy housing.

8. Housing Assistance made available under this Third Amended Agreement cannot be used in Personal Care Homes, group homes, nursing facilities, boarding homes, assisted living residences, supervised living settings that do not meet the requirements of Section III.D.7., or any setting required to be licensed or certified.

9. Individuals will be free to choose other appropriate and available housing options after being fully informed of all options available. Being fully informed means that an individual has been provided information about the option of transitioning to supported housing, its benefits, and the array of services and supports available as set out in this Third Amended Agreement. However, housing that does not meet the criteria set forth herein shall not be considered Housing Assistance for the purpose of this Third Amended Agreement.

E. BEHAVIORAL HEALTH SERVICES

1. The Cabinet shall provide access to the array and intensity of services and supports under this Third Amended Agreement necessary to enable individuals with SMI currently residing in or at risk of entry into PCHs to successfully transition to and live in community-based settings. The Cabinet shall provide each individual receiving Housing Assistance under this Third Amended Agreement with access to services for which that individual is eligible that are covered under the Medicaid Program, or the Cabinet-funded service array as described in Section III.E.3. of this Agreement.

2. The services and supports referenced in this section shall:

   a) Be evidence-based, recovery-focused, and community-based;

   b) Be flexible and individualized to meet the needs of each individual;

   c) Help individuals to increase their ability to recognize and deal with situations that may otherwise result in crises; and

   d) Increase and strengthen individuals' networks of community and natural supports, as well as their use of these supports for crisis prevention and intervention.

3. The Cabinet shall rely on the following behavioral health services to satisfy the requirements of this Third Amended Agreement: Assertive Community Treatment (ACT) teams, case management services, crisis services, peer support services, and Supported Employment services.

4. The Cabinet shall require via its contracts with each CMHC that at least one county in each CMHC catchment area provides all of the services listed in Section III.E.3.

5. All ACT teams shall operate to fidelity to either, at the Cabinet's determination, the Dartmouth Assertive Community Treatment (DACT) model or the Tool for Measurement of Assertive Community Treatment (TMACT) or any fidelity models listed in the Substance Abuse and Mental Health Services Administration (SAMHSA) Tool Kits. All providers of behavioral mental health services shall adhere to requirements of the applicable service definition.

6. An initial person-centered transition service plan shall be developed within ninety (90) days of assignment to the transition coordinator/team, pursuant to Section III.F.3.f. for each individual, which shall be implemented by a

qualified professional who is clinically responsible for ensuring that all elements and components of the plan are arranged for the recipient in a coordinated manner. Individualized transition plans shall include psychiatric advance directives and/or crisis plans so that such measures can be incorporated into the response to any behavioral health crisis.

7. Case Management Services bring services, agencies, resources and people together to help an individual achieve his or her goals.

8. Crisis Services

    a. The Cabinet shall ensure that a crisis service system exists for individuals served under this Third Amended Agreement that includes crisis services sufficient to offer timely and accessible services and supports to those individuals experiencing a behavioral health crisis. The services shall include mobile crisis teams, community-based residential crisis services, and crisis telephone lines which shall be available 24 hours per day, 7 days per week.

    b. The Cabinet shall monitor crisis services and identify service gaps. The Cabinet shall develop and implement effective measures to address any gaps or weaknesses identified.

    c. Crisis services shall be provided in the least restrictive setting (including at the individual's resident whenever practicable), consistent with an already developed individual community-based crisis plan or in a manner that develops such a plan as a result of a crisis situation, and in a manner that prevents unnecessary hospitalization, incarceration, or institutionalization.

9. Peer Support Services shall be provided. Peer Support Services are the social and emotional support provided by persons with a mental health condition to others sharing a similar mental health condition to bring about a desired social or personal change. The job of a Peer Specialist is not to replace current clinical mental health staff, but to offer additional and/or alternative options to help people in their efforts to recover.

10. Supported Employment

    a. The Cabinet shall develop and implement measures to provide Supported Employment Services to individuals under this Agreement who are residing in or at risk of entry into a PCH, that meet their individualized needs. Supported Employment Services are defined as services that will

assist individuals in preparing for, identifying, and maintaining integrated, paid, competitive employment. Services offered may include job coaching, transportation, assistive technology assistance, specialized job training, person-centered employment plans, job development and individually tailored supervision, including while residing in a PCH.

b. Supported Employment Services shall be provided with fidelity to an evidence-based supported employment model for supporting people in their pursuit and maintenance of integrated, paid, competitive work opportunities. Supported Employment Services shall be assessed by an established fidelity scale such as the scale included in the SAMHSA supported employment toolkit.

11. The Cabinet will require CMHCs receiving DIVERTS funds for provision of behavioral health services to provide a breakdown of approximate funds used for each behavioral health service. This information will be reported to DBHDID each quarter and reviewed at the Quarterly Cabinet-Level TASA Meetings.

F. DISCHARGE AND TRANSITION PROCESS

1. The Cabinet shall implement procedures for ensuring that individuals residing in or at risk of entry into a PCH will be accurately and fully informed in writing and signed by the individual about the community-based options provided under this Third Amended Settlement Agreement pursuant to Section III.D.9.

2. In addition to the Cabinet-level Administrator in Section III.C., the Cabinet shall maintain the overall transition team at the Cabinet level, which will include a representative from P&A, to provide oversight and assist local transition teams in addressing and overcoming identified barriers preventing individuals from transitioning to an integrated setting. The members of the transition team shall include individuals with experience and expertise in how to successfully resolve problems that arise during discharge planning and implementation of discharge plans.

3. Implementation of In-Reach, Discharge and Transition Process

a. DBHDID shall maintain requirements and materials for in-reach and transition coordinators and teams, including written protocols requiring referrals during the in-reach process to other programs such as the 1915(c) waivers, Veterans' Administration services, and state general fund services. DBHDID agrees to seek P&A's comments on any revisions and give them due consideration.

b. DBHDID shall ensure that ongoing in -reach occurs on a regular and continuing basis to individuals in PCHs and Cabinet-owned and operated psychiatric hospitals and individuals meeting the requirements of this Third Amended Agreement. The Cabinet will require CMHC in-reach providers to document visits, both in-person and those made via telehealth, to PCHs using a quality metric designed by DBHDID in which providers document each date of visit, length of visit to each facility, names of individuals to whom they spoke regarding Housing Assistance and community-based behavioral supports, and the individual's response. In-reach providers will be required to establish a set day to visit each PCH in their hospital catchment area, to include a minimum of one in person visit per month, to each PCH serving individuals who receive State Supplementation pursuant to 921 KAR 2:015, Section 13, so that residents are aware of when and by whom in-reach services are provided.

c. The Cabinet shall advise PCHs that they may not interfere with the reasonable access of in-reach and transition coordinators and teams to the PCHs and may not discourage PCH residents from meeting with such coordinators and teams. The Cabinet shall encourage the coordinators and teams to report any instances of such interference or discouragements and the Cabinet shall take appropriate corrective action to address interference and discouragement.

d. P&A shall be permitted to offer its assistance to individuals with SMI who are under state guardianship in accessing services under this Third Amended Agreement; and shall be allowed to represent those individuals under state guardianship that request P&A's assistance in accessing services under this Third Amended Agreement after the execution of the Full Advocacy and Legal Services Retainer Agreement with DAIL.

e. Initial contact (in-reach) will occur within fourteen (14) days of the date a referral is entered into the Data Tracking Tool maintained by DBHDID. Within fifteen (15) days of initial contact, individuals who have indicated they want to leave the PCH shall be assigned to a transition coordinator/team.

f. Initial transition and discharge planning for an individual meeting the qualifications of this Third Amended Agreement shall be completed within ninety (90) days of assignment to a transition coordinator/team. Discharge, if appropriate, for an individual served under this Third Amended Agreement will occur within one hundred, eighty (180) days of assignment to a transition coordinator/team if Housing Assistance is then

available. The total timeframe from referral to discharge is two hundred, nine (209) days. At least fifty percent (50%) shall be transitioned within the 209-day timeframe. If Housing Assistance is not available for an individual within 209 days of assignment to the transition coordinator/team, the transition team shall maintain contact and work with the individual on an ongoing basis until the individual transitions to community-based housing as described in Section III.D.

g. DBHDID will co-facilitate monthly Regional Transition Committee (RTC) meetings for each hospital catchment area, during which members of the team will identify barriers to transition and work together to create and implement solutions.

h. Within 90 days of the execution of this Third Amended Agreement, the Cabinet will provide a model procedure through which each CMHC may establish at least one transitional housing unit per catchment area which will enable individuals to experience community-based housing on a trial basis, with the option of returning to a hospital or a PCH with rights of return to a facility at the end of the trial period, before establishing permanent tenancy rights in the community.

i. For any individual who scores LOCUS 5 and still wants to pursue living independently in the community, the Cabinet has contractual language requiring CMHCs to offer to develop a person-centered recovery plan which shall include one or more specific interventions to address building independent living skills and reducing deficits in independent living skills. Such services may include, but are not limited to community support services, peer support, and case management.

G. QUALITY ASSURANCE & PERFORMANCE IMPROVEMENT

1. The Cabinet shall maintain and enhance a quality assurance and performance improvement monitoring system to ensure that community-based placements and services are developed in accordance with this Third Amended Agreement, and that the individuals who receive services or Housing Assistance pursuant to this Third Amended Agreement are provided with the services and supports they need for their health, safety, and welfare. The goal of the Cabinet's system will be that all mental health and other services and supports funded by the Cabinet are of good quality and are sufficient to help individuals achieve increased independence, gain greater integration into the community, obtain and maintain stable housing, avoid harms, and decrease the incidence of hospital contacts, incarceration, and institutionalization.

2. Quality Assurance System: The Cabinet shall regularly collect, aggregate, and analyze data related to in-reach and person-centered discharge and community placement efforts, including information related to both successful and unsuccessful placements, as well as the problems or barriers to placing and/or keeping individuals in the most integrated setting and the number of referrals and transitions from PCHs per CMHC region as reported in the DTT. Successful transitions shall be equal to or greater than seventy-five percent (75%) for the monitoring year of this Third Amended Agreement. The percentage of successful transitions that occur during each year of the TASA shall be measured as a separate and distinct data set. Such information shall include outcome-based measured and fidelity. The Cabinet shall review this information on a semi-annual basis and develop and implement measures to overcome the problems and barriers identified.

   Information obtained from the Quality Assurance Systems shall be shared with P&A on a quarterly basis unless requested sooner.

H. OTHER REQUIREMENTS

1. Independent Reviewer. The Parties shall select an independent reviewer to continue to monitor the Cabinet's implementation of this Third Amended Agreement, who shall have authority to independently assess, review, and file quarterly status reports to all parties to the Third Amended Agreement. Such assessment and review shall include analysis of unsuccessful transitions, including recommendations.

2. The Parties have chosen to monitor the Cabinet's implementation of this Third Amended Agreement through quarterly status reports on the Cabinet's implementation of and compliance with the provision of this Third Amended Agreement. A quarterly report on the individuals meeting the criteria of Section III.D.2. of this Third Amended Agreement shall be prepared that indicates the transition milestones achieved as defined in the Data Tracking Tool and the Data Tracking Tool Users' Manual maintained by DBHDID.

3. The implementation of this Agreement as an ISA began on September 1, 2013. The Parties anticipate that the Cabinet will have substantially complied with all provisions of this Third Amended Agreement by June 30, 2025, to be shown by continued monitoring from July 1, 2025, to June 30, 2026, of only the percentage of successful transitions. This Agreement shall terminate June 30, 2026, unless the Cabinet fully satisfies its terms prior to that date or unless it is otherwise extended, and, upon termination, the Parties agree to transition into a Sustainability Plan which will include the continuation of Housing Assistance with necessary behavioral health supports, Community Integration

Supplement, CMHC In-Reach into PCHs, and PCH Instruction in community transition skills per 902 KAR 20:036 and 921 KAR 2:015, and any additional services the Cabinet feels necessary to promote the community inclusion and well-being of individuals with SMI. Substantial compliance is achieved if any violations of the Third Amended Agreement are minor and occasional and are not systemic. Any Third Amended Agreement deadline may be extended by mutual agreement of the Parties.

4. Throughout the pendency of this Third Amended Agreement, P&A and the Cabinet shall coordinate and discuss areas of disagreement and attempt to resolve outstanding differences. In the event of any dispute over the language or construction of this Third Amended Agreement or its requirements, the Parties agree to meet and confer in an effort to achieve a mutually agreeable resolution prior to terminating the Third Amended Agreement.

5. If the Cabinet responds by proposing a curative action by a specified date, P&A may accept the Cabinet's proposal or offer a counterproposal for a different curative action or deadline. If the Parties reach an agreement that varies from the provisions of this Third Amended Agreement, the new agreement shall be in writing and signed. If the Parties fail to reach agreement on a plan for curative action, P&A may seek an appropriate judicial remedy.

6. Failure by any Party to enforce this entire Third Amended Agreement or any provision thereof with respect to any deadline or any other provision here shall not be construed as a waiver.

7. The Cabinet shall maintain sufficient records to document that the requirements of this Third Amended Agreement are being properly implemented and shall make such records available to P&A for inspection and copying upon request.

8. Notice under this Third Amended Agreement shall be provided by overnight courier to the following or their successors:

   For the Cabinet:

   Commissioner
   Department for Behavioral Health, Developmental and Intellectual Disabilities
   275 E. Main Street
   Frankfort, Kentucky 40621

Office of General Counsel
Cabinet for Health and Family Services
275 E. Main Street
Frankfort, Kentucky 40621

For P&A:

Director
Protection and Advocacy
5 Mill Creek Park
Frankfort, Kentucky 40601

9. The precise acts to be done by the Parties under this Third Amended Agreement are clearly ascertainable and any breach of this Third Amended Agreement may result in significant and irreparable damage to either Party for which they will not have an adequate remedy at law. Accordingly, in addition to any other remedies and damages available, the Parties acknowledge and agree that they may immediately seek enforcement of this Third Amended Agreement by means of specific performance and that specific performance will be an available equitable remedy.

Signatures:

DocuSigned by:
Eric Friedlander
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Eric Friedlander
Secretary
Cabinet for Health and Family Services

DocuSigned by:
Jeff Edwards
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Jeff Edwards
Director
Kentucky Protection and Advocacy

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Wes W. Duke
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Wes W. Duke
Approved as to Form

6/21/2023
Date

DocuSigned by:
Heidi Schissler Lanham
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Heidi Schissler Lanham
Approved as to Form

6/21/2023
Date