

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is entered into on this 4th day of September, 2013 by and between the State of New Mexico Human Services Department, located at 2009 S. Pacheco, Santa Fe, New Mexico (the "**Disclosing Party**"), and Presbyterian Medical Services, Inc., located at 1422 Paseo de Peralta, Santa Fe, New Mexico (the "**Recipient**" or the "**Receiving Party**"). The Disclosing Party and the Recipient are referred to collectively as the "Parties").

The Recipient desires to participate in settlement discussions with the Disclosing Party regarding certain alleged Medicaid overpayments made to the Recipient for the provision of behavioral health services within the State of New Mexico (the "**Settlement Discussions**"). In furtherance of the Settlement Discussions, the Disclosing Party may share certain confidential law enforcement information with the Recipient. The New Mexico Attorney General's Office has requested that the Disclosing Party maintain the confidentiality of this information pending the completion of its investigation into the Disclosing Party's referral of credible allegations of fraud relating to the Receiving Party. In addition, the information to be shared by the Disclosing Party is the object of a Stipulated Order in the First Judicial District Court of New Mexico that requires the Office of the State Auditor to maintain its confidentiality. Notwithstanding the foregoing, the Disclosing Party may share this information with the Recipient, subject to this Agreement, pursuant to NMSA Section 27-14-5.

Therefore, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Definition of Confidential Information.**

(a) For purposes of this Agreement, "**Confidential Information**" means any data or information provided to the Receiving Party by the Disclosing Party after the date of this Agreement that is part of, or relevant to, the ongoing investigation by the New Mexico Attorney General's Office ("**AGO**") into credible allegations of fraud by the Recipient and not generally known to the public, whether in tangible or intangible form, however disclosed, including, but not limited to: (i) the audit findings of Public Consulting Group, Inc. (the "**Audit**"); (ii) any underlying data or information that supports the findings in the Audit; and (iii) any other related information that should reasonably be recognized as confidential information of the Disclosing Party.

(b) Notwithstanding anything in the foregoing to the contrary, Confidential Information shall not include information which: (i) was known by the Receiving Party prior to receiving the Confidential Information from the Disclosing Party; (ii) becomes rightfully known to the Receiving Party from a third-party source not known (after diligent inquiry) by the Receiving Party to be under an obligation to Disclosing Party to maintain confidentiality; (iii) is or becomes publicly available through no fault of or failure to act by the Receiving Party in breach of this Agreement; (iv) is required to be disclosed in a

judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation, although the requirements of paragraph 5 hereof shall apply prior to any disclosure being made; and (e) is or has been independently developed by employees, consultants, attorneys or agents of the Receiving Party without violation of the terms of this Agreement or reference or access to any Confidential Information.

2. **Disclosure of Confidential Information.**

From time to time, the Disclosing Party may disclose Confidential Information to the Receiving Party. The Receiving Party will: (a) limit disclosure of any Confidential Information to its directors, officers, employees, agents, attorneys, or representatives (collectively "**Representatives**") who have a need to know such Confidential Information in connection with the Settlement Discussions to which this Agreement relates, and only for that purpose; (b) advise its Representatives of the nature of the Confidential Information and of the obligations set forth in this Agreement and require such Representatives to keep the Confidential Information confidential; (c) keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties (except as otherwise provided for herein).

Each party shall be responsible for any breach of this Agreement by any of their respective Representatives.

3. **Use of Confidential Information.**

The Receiving Party agrees to use the Confidential Information solely in connection with the Settlement Discussions and not for any purpose other than as authorized by this Agreement. No other right or license, whether expressed or implied, in the Confidential Information is granted to the Receiving Party hereunder. Title to the Confidential Information will remain solely in the Disclosing Party.

4. **Settlement Privilege.**

The Parties agree that this Agreement, the Confidential Information and all related discussions between the Parties, their officers, agents, attorneys and representatives, are solely for the purpose of the Settlement Discussions and are thus confidential and governed by New Mexico Rule of Evidence 11 - 408.

5. **Compelled Disclosure of Confidential Information.**

Notwithstanding anything in the foregoing to the contrary, the

Receiving Party may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request or similar method; provided that the Receiving Party promptly notifies the Disclosing Party in writing of such demand for disclosure so that the Disclosing Party, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information in accordance with the request of the AGO. The Receiving Party agrees that it shall not oppose and shall cooperate with efforts by, to the extent reasonably practicable, the Disclosing Party with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if the Disclosing Party is unable to obtain or does not seek a protective order and the Receiving Party is legally requested or required to disclose such Confidential Information, disclosure of such Confidential Information may be made without liability.

6. **Term.**

This Agreement shall terminate on the earlier to occur of (i) the date that is one year from the date hereof and (ii) the termination of AGO's investigation of the credible allegations of fraud against the Receiving Party.

7. **Remedies.**

Both Parties acknowledge that the Confidential Information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination of the Confidential Information would be deleterious to the ongoing fraud investigation of the AGO. The damages to Disclosing Party that would result from the unauthorized dissemination of the Confidential Information would be impossible to calculate. Therefore, both Parties hereby agree that the Disclosing Party shall be entitled to injunctive relief preventing the dissemination of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. Disclosing Party shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

8. **Return of Confidential Information.**

Receiving Party shall immediately return and redeliver to the Disclosing Party all tangible material embodying the Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or materials ("Notes") (and

all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of (i) the completion or termination of the Settlement Discussions between the Parties contemplated hereunder; (ii) the termination of this Agreement; or (iii) at such time as the Disclosing Party may so request. Alternatively, the Receiving Party, with the written consent of the Disclosing Party may (or in the case of Notes, at the Receiving Party's option) immediately destroy any of the foregoing embodying Confidential Information (or the reasonably nonrecoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Receiving Party supervising the destruction).

9. **Notice of Breach.**

Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information by Receiving Party or its Representatives, or any other breach of this Agreement by Receiving Party or its Representatives, and will cooperate with efforts by the Disclosing Party to help the Disclosing Party regain possession of Confidential Information and prevent its further unauthorized use.

10. **No Binding Agreement for Settlement.**

The Parties agree that neither party will be under any legal obligation of any kind whatsoever with respect to a resolution of any disputed issues between them by virtue of this Agreement, except for the matters specifically agreed to herein. The Parties further acknowledge and agree that they each reserve the right, in their sole and absolute discretion, to reject any and all proposals and to terminate Settlement Discussions at any time. If the Parties reach a settlement, the non-disclosure provisions of any applicable settlement documents entered into between the Parties (or their respective affiliates) that relate to the Confidential Information shall supersede this Agreement. In the event such provision is not provided for in said settlement documents, this Agreement shall control.

11. **This Agreement is not Binding on the AGO.**

The Parties recognize that the AGO is not a party to this Agreement and any resolution that the Parties may reach regarding the disputed issues between them is not binding on it.

12. **Miscellaneous.**

(a) This Agreement constitutes the entire understanding between the Parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the Parties, with respect to the subject matter hereof. This Agreement can only be modified by a written amendment signed by the party against whom enforcement of such modification is sought.

(b) The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of New Mexico applicable to contracts made and to be wholly performed within such state, without giving effect to any conflict of laws provisions thereof. The Federal and state courts located New Mexico shall have sole and exclusive jurisdiction over any disputes arising under the terms of this Agreement.

(c) Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

(d) Although the restrictions contained in this Agreement are considered by the Parties to be reasonable for the purpose of protecting the Confidential Information, if any such restriction is found by a court of competent jurisdiction to be unenforceable, such provision will be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. If it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement will be enforced as if such provision was not included.

(e) Any notices or communications required or permitted to be given hereunder may be delivered by hand, deposited with a nationally recognized overnight carrier, electronic-mail, or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the address of the other party first indicated above (or such other addressee as may be furnished by a party in accordance with this paragraph). All such notices or communications shall be deemed to have been given and received (i) in the case of personal delivery or electronic-mail, on the date of such delivery, (ii) in the case of delivery by a nationally recognized overnight carrier, on the third business day following dispatch and (c) in the case of mailing, on the seventh business day following such mailing.

(f) This Agreement is personal in nature, and neither party may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the other party, which consent will not be unreasonably withheld. All obligations

contained in this Agreement shall extend to and be binding upon the parties to this Agreement and their respective successors, assigns and designees.

(g) Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

(h) This Agreement may be executed in two counterparts, which together (i) shall be deemed an original, and (ii) shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” file, such signature is executed with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

[The remainder of this page is intentionally left blank.]

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

NEW MEXICO HUMAN SERVICES DEPARTMENT

By: Sidonie Squier 9/7/13
Sidonie Squier
Cabinet Secretary

By: [Signature]
Office of General Counsel
(Certifying legal sufficiency)

PRESBYTERIAN MEDICAL SERVICES, INC.

By: [Signature]
Name: Steven C. Hansen
Title: CEO