

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the North Carolina Office of the Attorney General; Rehoboth Consulting Agency; ("Rehoboth"); and Lisa King Hodge ("King"). Each of the above hereafter collectively referred to as "the Parties" through their authorized representatives.

RECITALS

A. Rehoboth provided behavioral health services to clients within the State of North Carolina. Lisa King Hodge was the President/Owner of Rehoboth at all applicable periods of time referenced below.

B. The Government contends that during the dates of January 1, 2011, through December 31, 2011, Rehoboth and King submitted or caused to be submitted claims for payment to the North Carolina Medicaid Program (Medicaid), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v, in violation of the North Carolina False Claims Act, N.C.G.S. §§ 1-605, *et seq.*, and the Medical Assistance Provider Claims Act, N.C.G.S. §§ 108A-70.10, *et seq.*; and

C. The Government contends that it has certain civil claims against Rehoboth and King arising from the following conduct, during the dates of January 1, 2011 through December 31, 2011 for Rehoboth and King's submission of claims to the North Carolina Medicaid Program for (a) individual, group and family outpatient behavioral health services which were in fact not rendered; (b) individual, group and family outpatient behavioral health services which were rendered by unqualified therapists; and, (c) individual, group and family outpatient behavioral

health services which no supporting clinical documentation exists, all of which the Government contends, were not medically necessary and which were performed in violation of Division of Medical Assistance Clinical Coverage Policy 8C, et seq.

This conduct, as recited above in Paragraph C, is referred to below and throughout this Settlement Agreement as the "Covered Conduct."

D. The government contends that its claim(s) set forth above are well founded. The defendant(s) do not deny the contentions as set forth above as "Covered Conduct."

E. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. King shall pay to the Government the aggregate principal amount of one hundred twenty five thousand dollars (\$125,000.00) (the "Settlement Amount") pursuant to written instructions to be provided by the North Carolina Department of Justice. No later than 30 days following the Effective Date of this Agreement, King shall pay \$15,000.00 to be credited by the Government towards the Settlement Amount. The remaining principal balance of \$110,000.00 shall be paid by King, due by 5:00 pm U.S. Eastern time on the following dates: (a) no later than May 31, 2019, King shall pay a lump sum payment of \$35,000.00 plus interest to be credited by the Government toward the Settlement Amount; (b) no later than August 31, 2017, King shall commence periodic payments of \$3,750.00 plus interest to be credited by the Government toward the Settlement Amount pursuant to the schedule attached as Exhibit A hereto; (c) Thereafter, King shall make payment of \$3,750.00 plus interest every ninety (90) days for a

period of time no more than five (5) years or until all remaining outstanding settlement monies are paid in full, transfer to be credited by the Government toward the Settlement Amount (or if on a weekend or holiday, the next United States business day) (each such day, a "Payment Date") pursuant to the schedule referenced above until the remaining Settlement Amount is paid in full, (unless the number of payments, final payment date or final payment amount is reduced or the final payment date accelerated by the provisions of this Paragraph 1); (d) to provide security as to the entire \$125,000.00 payment, King shall sign a Confession of Judgment (Pursuant to North Carolina Rules Civil Procedure, Rule 68) for the amount of \$125,000.00 plus interest which may be docketed upon her failure to timely pay the agreed upon payment amounts is reflected herein and her failure to cure such non-payment within 30 days;. Interest payable to the Government shall accrue at an annual rate of 2.75%, and on each Payment Date all interest, computed as 90 days (or, if the first payment, since the Effective Date)/365 (or, 366 during a calendar "leap" year) times 110,000.00 times .0275, shall be deemed immediately due and payable. Prepayment of any portion of the Settlement Amount is allowed. Interest, as computed by the provisions of Paragraph 1, shall also be due and payable on the date of any pre-payment. Upon any default by King of the terms contained in Paragraph 1 or any other terms of this Agreement, the Government shall have the unconditioned right to accelerate payment and require that the full Settlement Amount then-outstanding be immediately due and payable.

2. Subject to the exceptions in Paragraph 4 (concerning excluded claims), and conditioned upon King's full payment of the Settlement Amount, the State of North Carolina releases Lisa King Hodge and Rehoboth Consulting Agency from any civil or administrative monetary claim the State of North Carolina has for the Covered Conduct that is described above

under the North Carolina Medical Assistance Provider Fraud Claims Act, N.C.G.S. '108A-70.10, et seq.; the North Carolina False Claims Act, N.C.G.S. § 1-605, et seq.; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Default. In the event that King, either personally or through Rehoboth Consulting Agency, fails to pay any amount as provided in Paragraph 1, above, within five (5) business days of the date upon which such payment is due, King shall be in Default of its payment obligations ("Default"). The State of North Carolina will provide written notice of the Default, and King shall have an opportunity to cure such Default within five (5) business days from the date of the receipt of the notice. Notice of Default will be delivered to King, or to such representative as King shall designate in advance in writing. If King fails to cure the Default within five (5) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default on the remaining unpaid total (principal, balance and interest due). King hereby consents to a Consent Judgment, in the event of such Default in the amount of the unpaid balance, and the State of North Carolina, at its sole option, may: (a) offset the remaining unpaid balance from any amounts due and owing to King by any department, agency, or agent of the State of North Carolina at the time of the Default; or (b) exercise any other rights granted by law or in equity, including the option of referring such matters for private collection. King agrees not to contest any offset imposed and not to contest any collection action undertaken by the State of North Carolina pursuant to this Paragraph, either administratively or in any state or federal court. King shall pay the State of North Carolina all

reasonable costs of collection and enforcement under this Paragraph, including attorney's fees and expenses.

4. Notwithstanding the releases given in paragraph 2 of this Agreement, or any other term of this Agreement, the following claims of the Government are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; or
- e. Any liability based upon obligations created by this Agreement;

5. King has provided sworn financial disclosure statements ("Financial Statements") to the Government and the Government has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. King warrants that the Financial Statements were complete and accurate at the time they were provided to the Government. If the Government learns of asset(s) in which King had an interest at the time the Financial Statements were provided to the Government that were not disclosed in the Financial Statements, or if the Government learns of any misrepresentation by King on, or in connection with, the Financial Statements, and if such nondisclosure or misrepresentation changes the estimated net worth set forth in the Financial Statements by \$50,000 or more, the Government may at its option: (a) rescind this Agreement and file suit based on the Covered Conduct, or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of the value of the

net worth of King previously undisclosed. King agrees not to contest any collection action undertaken by the Government pursuant to this provision, and immediately to pay the Government all reasonable costs incurred in such an action, including attorney's fees and expenses.

6. In the event that the Government, pursuant to Paragraph 5 (concerning disclosure of assets) above, opts to rescind this Agreement, King agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the Government within 60 calendar days of written notification to King that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the date of execution of this Agreement.

7. King waives and shall not assert any defenses King may have to any criminal prosecution or administrative action relating to the Covered Conduct that are specifically limited to a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the Government concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

8. King fully and finally releases the State of North Carolina, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that King has asserted, could have asserted, or may assert in the future against the State of North Carolina, and its agencies, employees, servants, and

agents, related to the Covered Conduct and the State of North Carolina's investigation and prosecution thereof.

9. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicaid carrier or intermediary or any state payor, related to the Covered Conduct; and King agrees not to resubmit to any Medicaid carrier or intermediary or any state payor any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

10. King agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of King, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the Government's audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) King's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil investigation(s) in

connection with the matters covered by this Agreement (including attorney's fees);

(4) the negotiation and performance of this Agreement;

(5) the payment King makes to the Government pursuant to this Agreement, including any costs and attorney's fees; and

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by King, and King shall not charge such Unallowable Costs directly or indirectly to any contracts with the State of North Carolina or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by King or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, and to the extent necessary, King agrees to identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by King or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. King agrees that the Government, at a minimum, shall be entitled to recoup from King any overpayment plus applicable interest and penalties as a result of the

inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the Government pursuant to the direction of the North Carolina Department of Justice and/or the affected agencies. The Government reserves its rights to disagree with any calculations submitted by King or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on King or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the Government to audit, examine, or re-examine King's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

11. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity.

12. King agrees that it waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third-party payors based upon the claims defined as Covered Conduct.

13. King warrants that she has reviewed her financial situation and that she currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall, to the fullest extent possible, remain solvent during payment to the Government of the Settlement Amount. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a

contemporaneous exchange for new value given to King, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations due, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which King was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

14. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, King commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of King's debts, or seeking to adjudicate King as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for King or for all or any substantial part of King's assets, King agrees as follows:¹

a. King's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and King shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) King's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) King was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States; or (iii) the mutual promises,

¹ This clause should only be used if you have a reasonable basis to believe that bankruptcy or similar proceedings are likely. In the event there is reason to believe that any of the events described in this paragraph might take place, consult the Commercial Litigation Branch memorandum entitled "Bankruptcy Law with Special Emphasis on Chapter 11 and Civil Fraud." This memorandum is available on the "Bankruptcy" page of the False Claims Research Site maintained by the Civil Division.

covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to King.

b. If King's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State of North Carolina, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against King for the claims that would otherwise be covered by the releases provided in Paragraph 2 above. King agrees that (i) any such claims, actions, or proceedings brought by the State of North Carolina are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and King shall not argue or otherwise contend that the State of North Carolina's claims, actions, or proceedings are subject to an automatic stay; (ii) King shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within 90 calendar days of written notification to King that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on May 1, 2017²; and (iii) the State of North Carolina has a valid claim against King in an amount no less than \$11,032,908.48, and the State of North Carolina may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. King acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

² E.g., as noted above, use the Effective Date of the Agreement, the date any underlying action was filed, or the first day covered by any tolling agreement protecting the State of North Carolina's claims, whichever provides the fullest protection for the State of North Carolina.

15. As provided in 31 U.S.C. § 3730(d)(1) or (2), each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

17. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the Superior Court for the County of Wake, State of North Carolina. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

18. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

19. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

21. This Agreement is binding on the Parties' successors, transferees, heirs, and assigns.

22. All parties consent to the Government's disclosure of this Agreement, and information about this Agreement, to the public.

23. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date" of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

[Settlement Agreement *B Remainder of Page Intentionally Blank*]

THE STATE OF NORTH CAROLINA

DATED: 5/31/2017

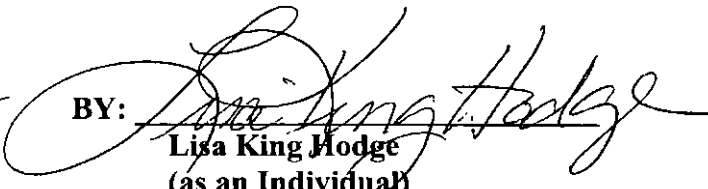
BY: Charles H. Hobgood

Charles H. Hobgood
Special Deputy Attorney General
Director, North Carolina Medicaid Investigations
Division

REHOBOTH CONSULTING AGENCY

DATED: 5/25/17 BY: 
Lisa King Hodge
(as Owner)

LISA KING HODGE

DATED: 5/25/17 BY: 
Lisa King Hodge
(as an Individual)